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Human rights bodies and mechanisms

Summary of discussions of the Forum on Business and Human Rights

Note by the Secretariat

In accordance with Human Rights Council resolutions 17/4 and 26/22, the fourth annual Forum on Business and Human Rights was held in Geneva from 16 to 18 November 2015. The Forum was chaired by Diana Chávez, and held under the guidance of the Working Group on the issue of human rights and transnational corporations and other business enterprises. The Chair of the Forum prepared a summary of the discussions of the Forum (A/HRC/FBHR/2015/2).

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Human Rights Council
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Agenda item 4
Human rights situations that require the Council's attention

Report of the commission of inquiry on human rights in Eritrea*, **

Summary

The Human Rights Council, in its resolution 29/18, extended the mandate of the commission of inquiry on human rights in Eritrea for one year to investigate systematic, widespread and gross violations of human rights in Eritrea with a view to ensuring full accountability, including where these violations may amount to crimes against humanity.

During the period under review, the commission noted no improvement with respect to the most critical human rights violations in Eritrea documented in its first report (A/HRC/29/42).

The commission has reasonable grounds to believe that crimes against humanity, namely, enslavement, imprisonment, enforced disappearance, torture, other inhumane acts, persecution, rape and murder, have been committed in Eritrea since 1991.

The commission concludes that, without substantial legal and institutional reform, Eritrea is not in a position to provide accountability for these crimes and violations. It therefore recommends that the Security Council refer the situation in Eritrea to the Prosecutor of the International Criminal Court for consideration, and that States Members of the United Nations exercise their obligation to prosecute or extradite any individual suspected of international crimes present on their territory.

* For detailed findings of the commission of inquiry, see A/HRC/32/CRP.1.

** The annexes to the present report are reproduced in the language of submission only.

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Contents

		Page
I.	Introduction	3
	A. Mandate	3
	B. Cooperation with the commission	3
	C. Methodology	3
	D. Applicable regional and international law	4
II.	Written submissions	4
III.	Recent human rights developments	6
	A. Introduction	6
	B. Current human rights concerns	6
IV.	Crimes against humanity	10
	A. Introduction	10
	B. Crimes against humanity in Eritrea	11
V.	Accountability	16
	A. Institutional accountability	16
	B. Individual accountability	17
	C. Accountability mechanisms	17
VI.	Conclusion and recommendations	18
	A. Conclusions	18
	B. Recommendations	19

Annexes

I.	Letter dated 7 December 2015 from the commission of inquiry addressed to the Permanent Representative of Eritrea to the United Nations	24
II.	Letter dated 24 February 2016 from the commission of inquiry addressed to the Minister for Foreign Affairs of Eritrea	25

I. Introduction

A. Mandate

1. The commission of inquiry on human rights in Eritrea was initially established for a period of one year by the Human Rights Council pursuant to its resolution 26/24. In that resolution, the Council mandated the commission to investigate all alleged violations of human rights in Eritrea, as outlined in the reports of the Special Rapporteur. The commission decided to focus the temporal scope of the investigation from 1991, when Eritrean entities took effective control of Eritrean territory.

2. On 26 September 2014, the President of the Human Rights Council appointed Mike Smith as chair of the commission and Victor Dankwa as a commissioner. Pursuant to Council resolution 26/24, the Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, was also named a member of the commission. The commissioners serve in a non-remunerated, independent and expert capacity.

3. The commission presented its report to the Human Rights Council (A/HRC/29/42) at its twenty-ninth session.[1] The Council subsequently adopted, without a vote, resolution 29/18, in which it extended the mandate of the commission for one year, in order to investigate systematic, widespread and gross violations of human rights in Eritrea with a view to ensuring full accountability, including where these violations may amount to crimes against humanity.

B. Cooperation with the commission

4. The Human Rights Council, in its resolution 29/18, reiterated its call upon the Government of Eritrea to cooperate fully with the commission of inquiry. Like during the first mandate of the commission, the Government failed to respond to the commission's repeated requests for access. The Permanent and Deputy Permanent Representatives of the Permanent Mission of Eritrea to the United Nations did, however, accept to meet the members of the commission in New York. The Deputy Permanent Representative also forwarded new national legislation and media articles on Eritrea to the commission. The Head of the commission secretariat was also able to meet with Presidential Adviser and Head of Political Affairs of the People's Front for Democracy and Justice (PFDJ), Yemane Gebreab, in Geneva during the thirty-first session of the Council session, in March 2016.

5. Given its limited ability to meet directly with Eritrean officials, the commission has relied, where relevant, on information issued by the Government.

C. Methodology

6. The investigations, analysis and conclusions of the commission were guided by the human rights treaties ratified by Eritrea and customary international law.

7. The commission followed the methods of work described in its first report, including with regard to the protection of witnesses, investigative methods, its legal and factual findings, the historical background of Eritrea, the State's economic and political context and its legal framework.

[1] See also A/HRC/29/CRP.1.

8. The protection of witnesses and victims remains a central concern. Almost all witnesses and victims feared reprisals by the Eritrean authorities, either against themselves or their family members in Eritrea. For this reason, all information gathered by the commission during its investigations is confidential. The commission systematically sought the explicit and informed consent of victims and witnesses for the use of information pertaining to them.

9. The commission paid special attention to allegations of sexual and gender-based violence, including violence against women and girls, and assessed the gender dimension and impact of other violations. It also took into account the specific challenges posed in investigating allegations of sexual violence against both women and men.

10. In accordance with practices followed by previous United Nations commissions of inquiry and other fact-finding bodies denied access to the territory where the alleged violations were committed, the commission visited neighbouring and other countries to conduct interviews with those who had first-hand information. It also conducted interviews using audio and video means of communication.

11. On 9 November 2015, the commission issued an invitation for written submissions. The deadline for submissions was 15 January 2016.

12. The commission recalls that, although it is not a judicial body, it adopted a rigorous approach when analysing the information it collected. It assessed the credibility and reliability of each witness's evidence on the basis of the information available to it. Patterns of conduct described by the commission are based on numerous credible sources with direct information, supplemented with expert evidence, hearsay evidence and/or open source information.

13. Like similar United Nations commissions of inquiry, the commission maintained its standard of proof based on "reasonable grounds to believe".

D. Applicable regional and international law

14. Eritrea is a State party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the first two Optional Protocols thereto, the African Charter on the Rights and Welfare of the Child, the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105) of the International Labour Organization.

15. Although Eritrea is not a party to the Rome Statute of the International Criminal Court, many provisions of the Rome Statute reflect international customary law binding on Eritrea.

II. Written submissions

16. In response to its call, the commission received almost 45,000 written submissions, the vast majority of which were critical of the first report of the commission. Only eight submissions were sent from Eritrea.

17. To evaluate the submissions, the commission adopted a methodology to ensure that a statistically representative sample of more than 500 individuals from 16 countries would be contacted about their contributions.

18. Given the large number of group letters and petitions and the similar contents of most of the submissions, the commission has concluded that the campaign critical of its first report was well organized. While the commission is satisfied that a significant number of the letters were essentially voluntary, very few of those contacted had actually read the report, and many had been provided with sensationalized information about the commission's findings.

19. The commission found that the most fervent critics of its findings were Eritreans who had left the country before or immediately after 1991. A substantial number of correspondents stated that they had written primarily to voice their opposition to United Nations sanctions. These submissions were therefore largely based on either an erroneous understanding or deliberate misinformation about the United Nations sanctions regime. There appeared to be significant misinformation on other issues as well; for example, one correspondent stated that he had written to counter the commission's finding that "women were being raped on every Eritrean street corner".

20. Among the submissions, there were some letters that had been submitted involuntarily, namely, either because the author had been coerced or the letter had been submitted without the knowledge of the signatory. In one country, a significant number of contributors stated that they had not appended their names to a petition and that their signatures had therefore been forged. Of greatest concern were those witnesses in States where Eritreans tend to be guest workers rather than refugees or dual nationals, who informed the commission that Eritrean officials had made it known that Eritreans who did not write to the commission supporting the Government would not have their passports renewed. Without a valid passport, Eritrean workers would not have their visas renewed.

21. The commission was able to identify a number of common themes in the correspondence, including the commission's failure to visit Eritrea; the detrimental impact of United Nations sanctions on the humanitarian situation in Eritrea; that there was no rape in Eritrea; the failure of the commission to ensure implementation of the decision of the Eritrea-Ethiopia Boundary Commission on Badme; that indefinite military conscription in Eritrea was justified by the threat from Ethiopia; that there was no discrimination against women; the history of inter-ethnic and interreligious harmony in Eritrea; that there was no shoot-to-kill policy at Eritrean borders; that education and health care were free in Eritrea, unlike in other States; and that Eritrea had made progress on the Millennium Development Goals.

22. The commission notes that most writers stated that they visited Eritrea only occasionally. Many stressed the general sense of calm and order in Asmara. It is important to note, however, that the types of gross human rights violations in Eritrea documented by the commission in its first report are not committed on the streets of Asmara, but rather behind the walls of detention facilities and in military training camps. Torture and rape are not normally perpetrated in the open; the commission nonetheless gathered a large amount of corroborated evidence and observed the physical and emotional scars of such violence in people who have fled the country. The façade of calm and normality that is apparent to the occasional visitor to the country, and others confined to sections of the capital, belies the consistent patterns of serious human rights violations. After careful review, the commission concludes that the submissions do not undermine the findings described in its first report.

III. Recent human rights developments

A. Introduction

23. There have been several notable developments in Eritrea since the publication of the commission's report in June 2015. In February 2016, at the request of the Government, a delegation of the Office of the United Nations High Commissioner for Human Rights (OHCHR) undertook a working-level technical assessment visit to Eritrea. In March 2016, the Government of Eritrea released four Djiboutian prisoners of war. In addition, a delegation of the Office for the Coordination of Humanitarian Affairs visited Eritrea. The President of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea has also been invited.

24. The OHCHR delegation visited community courts and interacted with officials and judges. It also visited local community projects, Sembel prison and the rehabilitation centre in Asmara. OHCHR noted that the visit was short and not conducted in circumstances that allowed for a full assessment of the situation of human rights.

25. A number of foreign journalists were also invited to Eritrea. The commission notes that Eritreans have some access to international news, satellite television and the Internet, particularly in Asmara.

26. The Government provided the commission with documentation on four pieces of legislation issued in May 2015. The commission has however received conflicting reports on whether the new legislation is actually in force.

27. Large numbers of Eritreans continue to flee the country. In 2015, 47,025 Eritreans applied for asylum in Europe, slightly higher than the number in 2014, more than double the number of applications made in 2013 and nearly four times the figure for 2012.[2]

B. Current human rights concerns

28. The commission did not review each and every human rights violation reported to it, but rather had the aim to apprise the Human Rights Council of developments, or lack thereof, with regard to patterns of the gravest violations.

29. The commission prioritized gathering information on human rights issues from those who had recently fled Eritrea. The evidence collected revealed that the serious human rights violations documented by the commission in its first report persist. Eritreans continue to be subjected to indefinite national service, arbitrary detention, torture, enforced disappearances, reprisals for the alleged conduct of family members, discrimination on religious and ethnic grounds, sexual and gender-based violence, and killings. In addition, many of those subjected to enforced disappearances in the past remain unaccounted for.

1. Right to participate in public affairs

30. The delegation of Eritrea participating in eighteenth session of the Working Group on the Universal Periodic Review stated that national elections would not be held until "the threats to national security and sovereignty had been eliminated". The commission received no indication of plans to hold national elections.

[2] See Eurostat, Asylum quarterly report, 3 March 2015.

2. Constitution and the rule of law

31. It is widely accepted that the Constitution of 1997 has never been in force. In May 2014, President Isaias Afwerki announced the drafting of a new constitution. Presidential adviser Yemane Gebreab informed the commission that a committee had been established to consider drafting a new constitution. The commission did not receive any further detail about the process. Witnesses also confirmed that subordinate legislation issued by decree was still being implemented in an arbitrary manner. The legal vacuum continues to have far-reaching consequences for the protection of human rights in Eritrea. In addition, there is no independent judiciary, no national assembly and no other democratic institutions. In conclusion, the commission has found no progress in establishing the rule of law.

3. Military/national service programmes

32. In its first report, the commission documented a number of grave human rights violations in the State's military national service programmes, including its prolonged and indefinite duration, abusive conditions and the use of conscripts as forced labour. Indefinite military/national service is frequently cited by Eritreans as the prime reason for leaving Eritrea.

33. On 8 April 2015, Yemane Gebreab, at the Bruno Kreisky Forum for International Dialogue, announced that Eritrea intended to limit its military national service programmes to 18 months. Eight months later, however, the Government stated:

> Eritrea has no option but to take necessary measures of self-defense that are proportionate to the threat it faces. [...] This is the reason why National Service – limited by law to 18 months – remains prolonged.[3]

34. In February 2016, the Minister for Information, Yemane Ghebremeskel, confirmed that there were no plans to limit military service programmes, stating that "demobilization is predicated on removal of the main threat", and "You are talking about prolongation of national service in response to... continued belligerence by Ethiopia."[4]

35. The commission emphasizes that mandatory military national service is not necessarily a human rights violation. What distinguishes the military national service programme in Eritrea from those in other States is (a) its open-ended and arbitrary duration, which routinely exceeds the 18 months provided for in a decree issued in 1995, frequently by more than a decade; (b) the use of conscripts as forced labour in a wide range of economic activities, including private enterprises; and (c) the rape and torture perpetrated in military camps, and other conditions that are often inhumane.

36. In addition to a reserve army, in 2012, the Government created Hizbawi Serawit, often referred to as the "People's Army" or "the militia". Numerous witnesses informed the commission that Eritreans in their 60s and 70s are required to participate in the activities of Hizbawi Serawit. In sum, very few Eritreans are ever released from their military national service obligations.

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[3] Shabait.com, "UNHCR Eligibility Guidelines: Factual Findings or Recycled Defamation?", 17 December 2015.

[4] Reuters, "Eritrea won't shorten national service despite migration fears", 25 February 2016.

4. Arbitrary detention, enforced disappearance, and torture

37. In its first report, the commission reported extensively on cases of arbitrary detention, enforced disappearance, and torture and other cruel, inhuman or degrading treatment in detention centres, military and civilian, official and unofficial.

38. The commission interviewed many Eritreans who had fled the country in the previous two years and reported that the violations described continue. Almost all of those arrested are detained in violation of fundamental rules of international law. Apart from those accused of minor common crimes or misdemeanours, most are detained without any form of judicial proceeding whatsoever. In the vast majority of those cases, the families of those detained receive no official information about the fate of their relatives. Lastly, many of those detained who spoke with the commission – either because they had been released or because they had escaped – described various forms of torture inflicted on them to obtain information or to punish them for alleged wrongs, or simply to create a general climate of fear.

39. On the basis of the information gathered, the commission found that the use of torture by Eritrean officials has been, and remains, both widespread and systematic in civilian and military detention centres.

5. Reprisals against third parties

40. In its first report, the commission described cases of reprisal against family members, friends and associates for the alleged conduct of a third person. Forms of reprisal include arrest, detention, fines, harassment, eviction and the confiscation of property. Those targeted included persons close to government critics within and outside the country, Eritreans alleged to have evaded or deserted military national service, Eritreans who left the country, Eritreans who escaped from prison and members of non-recognized religions.

41. The commission heard evidence that the punishment of third parties for alleged wrongs continues. With regard to the claims made by government officials that any punishment of third parties would be pursuant to legal proceedings on charges of aiding and abetting the alleged wrongdoer, the commission found no evidence to support this. On the contrary, all witnesses told the commission that there had been no judicial proceedings relating to their punishment.

6. Discrimination on religious or ethnic grounds

42. In its first report, the commission found that the Government held tight control over the freedom of religion. Only four religious denominations are recognized, namely, Eritrean Orthodox, Roman Catholic, Evangelical Lutheran and Sunni Islam. Religious practice by members of non-authorized religions is prohibited, and subject to systematic repression. Following a decree issued in 2002 requiring registration of all religious denominations seeking authorization to practice, a number of smaller religious groups attempted to register. To date, none have been registered.

43. The commission recognizes that a considerable degree of religious harmony exists between authorized denominations. Nonetheless, a number of witnesses informed the commission that discrimination against members of non-authorized religions continues. Government control of authorized religions also persists; for example, the commission received reports of recent arbitrary arrests and the detention of an unconfirmed number of priests, deacons and monks of the Eritrean Orthodox Church in and around Asmara, and other measures against other clergy members. Sources said that the victims had asked for the release of former Patriarch Abune Antonios.

44. The commission also received disturbing reports about discrimination against the minority Afar and Kunama ethnic groups. These reports require further investigation.

7. Sexual and gender-based violence

45. The commission found that sexual and gender-based violence persists in Eritrea. It heard evidence that some cases of rape committed by men against women in local communities had been adjudicated by courts, and the perpetrators had been sentenced to imprisonment. However, rape and domestic servitude in military training centres and in the army, and rape in detention, go unpunished. Women and girls who try to flee the country are at greater risk of sexual and gender-based violence. The commission documented recent cases of women and girls, arrested by soldiers guarding the border, who were forced to strip naked and subjected to acts of sexual violence.

46. Rapes often resulted in physical and/or mental suffering and pain and, in some instances, to unwanted pregnancies or sexually-transmitted diseases, such as HIV, consequences that in turn gave rise to further human rights violations and discrimination.

47. Detention continues to have a discriminatory effect on women, given that the special needs of pregnant and nursing mothers and women with children in detention continue to be neglected. In some recent instances, this has resulted in miscarriage or infant illness.

48. Harmful practices, such as the forced marriage of underage girls, including as a result of poverty, persist in Eritrea, even though the legal minimum age for marriage is 18 years. Discrimination against women intersects with other human rights violations. Girls continue to be removed from school and/or forced into marriages arranged by their families in order for them to avoid the harsh conditions and the possibility of sexual abuse in national service training centres. Female and child relatives of men who have been subjected to an enforced disappearance are often victims of various forms of discrimination.

49. Sexual violence against men continues in detention. Men's sexual organs are often targeted for beating or electric shock, in some instances with the intent of ensuring that the victim will no longer be able to reproduce.

8. Right to life

50. The commission found that, in Eritrea, the Government violates the right to life in two ways: (a) by committing extrajudicial killings; and (b) by subjecting Eritrean citizens to abysmal conditions of detention and national service, in which death is a foreseeable consequence.

51. The commission obtained reliable evidence that the shoot-to-kill policy at Eritrean borders targeting Eritreans attempting to flee the country is still in force, even though it is not implemented as rigorously as in the past. Other types of extrajudicial killings have also been confirmed; for example, on 3 April 2016, as military/national service conscripts were being transported through the centre of Asmara, several conscripts jumped from the trucks on which they were travelling. Soldiers fired into the crowd, killing and injuring an unconfirmed number of conscripts and bystanders.

52. The commission also received recent information about deaths in detention and in the course of military service owing to the State's callous disrespect for human life.

9. Freedom of expression, assembly and association

53. In its first report, the commission reported extensively on violations of freedom of expression, assembly and association. It heard evidence that suggested that there has been no material improvement in the enjoyment of the rights to freedom of expression, assembly and association.

10. Nakfa exchange

54. On 4 November 2015, the Government published a decree on the exchange of old Nakfa currency notes for new ones. Many witnesses raised concerns about this programme. Withdrawal is limited to small sums, regardless of the amount deposited. The commission notes that the programme is not being implemented in accordance with applicable legal notice, but believes it is too early to make definitive conclusions with regard to the impact of the programme on economic rights and the rights to property, privacy, legal certainty and the presumption of innocence.

11. Financial transparency and corruption

55. The Monitoring Group on Somalia and Eritrea, in its report on Eritrea submitted to the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, pointed out that the Government of Eritrea continued not to disclose its budget appropriations, and that the State's budget was not publicly available (S/2015/802, para. 69). The commission observes that the Government's disregard for financial transparency and accountability reflects its indifference to the rule of law in other areas, and makes it more difficult to assess its progress in implementing economic and social rights.

56. Numerous witnesses indicated that petty corruption, bribery, trading in influence, illicit enrichment and abuse of authority are endemic in Eritrea. These forms of corruption have a direct impact on citizens' enjoyment of civil and political rights, and undermine the rule of law. Witnesses consistently linked corruption to exemption or early release from military service. They also described the use of conscript labour to benefit individuals or private enterprises, a particular form of illicit enrichment. According to other witnesses, officials also routinely accepted bribes to release individuals from detention and to obtain unofficial information about the location of detained relatives. Many others indicated that they had bribed border officials to turn a blind eye to their passage out of the country.

IV. Crimes against humanity[1]

A. Introduction

57. In its resolution 29/18, the Human Rights Council extended the mandate of the commission of inquiry to investigate systematic, widespread and gross violations of human rights in Eritrea, including where these violations may amount to crimes against humanity.

58. For the purposes of the present report, the commission will rely on the definitions of crimes contained in the Rome Statute of the International Criminal Court where they reflect customary international law. Where the Rome Statute is silent or incomplete, or where the commission is uncertain that the Statute reflects customary international law, the commission will supplement its discussion by reviewing relevant jurisprudence and other reliable sources of international criminal law. There is no statute of limitations with respect to crimes against humanity.

[1] For more detailed legal analysis, see A/HRC/32/CRP.1.

B. Crimes against humanity in Eritrea

59. Article 7 of the Rome Statute defines crimes against humanity as particular acts when committed as part of a widespread or systematic attack directed against any civilian population.

60. The commission previously concluded that the Government of Eritrea and the PFDJ had adopted totalitarian practices aimed at perpetuating their own power (A/HRC/29/42, para. 24). Central to the ruling leadership's campaign to perpetuate its hold on power has been its wholesale disregard for the right to liberty and security of its citizens. Specifically, Eritrean officials have committed the crimes of enslavement, imprisonment, enforced disappearance, torture, reprisals as other inhumane acts, persecution, rape and murder.

61. Enslavement has been committed on an ongoing, widespread and systematic basis since 2002.[5] Imprisonment, enforced disappearance, torture, reprisals as other inhumane acts, and persecution have been committed on a persistent, widespread and systematic basis since 1991. Rape and murder have been committed in a systematic manner since 1991.

62. Because State officials have relied so extensively on the commission of the crimes to establish and consolidate total control over the Eritrean population, the commission has determined that they have engaged in a persistent, widespread and systematic attack against the civilian population of Eritrea since May 1991.

63. Given that many of the victims of the above acts were, and still are, military national service conscripts, the commission has considered whether such conscripts may be classified as members of the civilian population for the purposes of crimes against humanity. It is of the view that, with the exception of defined periods,[6] Eritrea has not been engaged in an armed conflict as defined in international law. International humanitarian law, which distinguishes between combatants, combatants *hors de combat* and civilians, does therefore not apply. Given the particular nature of military national service programmes in Eritrea, conscripts have had an "inoffensive character" and therefore may be victims of an attack on the civilian population.

1. Enslavement

64. The international prohibition against enslavement is reflected in article 7(2)(c) of the Rome Statute, which defines the crime as "the exercise of any or all of the powers attaching to the right of ownership over a person". The commission relied on the interpretations of this definition by four international criminal tribunals, namely, the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.[7] Acts of sexual slavery have also been addressed under the crime of enslavement.

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[5] With the exception of the period from 10 to 12 June 2008, when Eritrea was involved in armed clashes with Djibouti.

[6] From May 1998 to June 2000 and from 10 to 12 June 2008.

[7] For the International Criminal Tribunal for the Former Yugoslavia, see *Prosecutor v. Kunarac*, IT-96-23-I& IT-96-23/1-I, judgment, 22 February 2001, paras. 518-543; and *Prosecutor v. Kunarac*, IT-96-23& IT-96-23/1-A, judgment, 12 June 2002, paras. 116-124; for the Special Court for Sierra Leone, *Prosecutor v. Taylor*, SCSL-03-01-A-1389, judgment, 26 September 2013, paras. 446-448 (citing the Kunarac judgments approvingly); for the International Criminal Court, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436, judgment pursuant to Article 74 of the Statute, 7 March 2014, para. 976; and for the Extraordinary Chambers in the Courts of Cambodia, *Prosecutor v. Kaing*, 001/18-07-2007-ECCC/SC, appeal judgment, 3 February 2012, paras. 117-162.

65. Like the victims of the crime of enslavement in Germany during the Second World War, in Cambodia during the Khmer Rouge regime, and in the former Yugoslavia and Sierra Leone in the 1990s, the victims of the military national service schemes in Eritrea are not bought and sold on an open market. Rather, the powers attaching to the right of ownership in Eritrea are revealed by (a) the uncertain legal basis for the national service programmes; (b) the arbitrary and open-ended duration of conscription, routinely for years beyond the 18 months provided for by the decree of 1995; (c) the involuntary nature of service beyond the 18 months provided for by law; (d) the use of forced labour, including domestic servitude, to benefit private, PFDJ-controlled and State-owned interests; (e) the limitations on freedom of movement; (f) the inhumane conditions, and the use of torture and sexual violence; (g) extreme coercive measures to deter escape; (h) punishment for alleged attempts to desert military service, without an administrative or judicial proceeding; (i) the limitations on all forms of religious observance; and (j) the catastrophic impact of lengthy conscription and conditions on freedom of religion, choice, association and family life.

66. Here, the commission again wishes to stress that compulsory military national service is not necessarily a human rights violation or a crime against humanity. What distinguish military national service programmes in Eritrea from those in other States are the apparent underlying purposes of the programmes and the manner in which they are implemented.

67. The Government has on many occasions stated that prolonged military national service is necessitated by external threats, including the occupation by Ethiopia of Eritrean territory and United Nations sanctions. In the view of the commission, these do not justify the open-ended and arbitrary nature of the State's military national service programmes, nor do they explain the use of conscripts to carry out non-military work, including for State-owned and other enterprises.

68. The commission concludes that there are reasonable grounds to believe that, within the context of military national service programmes, Eritrean officials exercise powers attaching to the right of ownership over Eritrean citizens. It also determines that, despite the justifications for a military national service programme advanced in 1995, the programmes today serve primarily to boost economic development, to profit State-endorsed enterprises and to maintain control over the Eritrean population in a manner inconsistent with international law. The commission therefore finds that there are reasonable grounds to believe that Eritrean officials have committed the crime of enslavement, a crime against humanity, in a persistent, widespread and systematic manner since no later than 2002.

2. Imprisonment or other severe deprivation of physical liberty

69. The international prohibition against imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law is reflected in article 7(1)(e) of the Rome Statute. The commission stresses that the right to liberty is not absolute and that individuals may be arrested in certain circumstances and conditions. It focuses primarily on the inordinate number of detentions without any form of legal authorization or proceeding.

70. The vast majority of witnesses informed the commission that they had been arrested and detained arbitrarily, many repeatedly, or had had friends or relatives who had been detained for periods ranging from months to years.

71. Arbitrary detention in Eritrea is routine and indiscriminate. Indeed, in its first report, the commission concluded that Eritreans were arrested for reasons arbitrary to such an extent that no one could possibly identify the law that might have been broken (A/HRC/29/42, para. 41). When referring to detained individuals, Eritrean officials

regularly invoke treason and espionage. Treasonous behaviour appears to include conscientious objection to military service, practice of an unauthorized religion, applying for release from military service, attempting to escape military service, trying to leave the country, seeking information about the detention of a loved one, offending a high-ranking government or PFDJ official and having a family member accused of a perceived wrong. The Government has successfully stifled all forms of political dissent, and those who have spoken out in the past have generally disappeared, fled or been otherwise silenced.

72. Most witnesses told the commission that they had been arrested and detained without due process. They were not arrested on the basis of a warrant. They were not informed of the reasons for their detention. They were never charged or advised of procedural rights. They were never provided with legal assistance or an opportunity to contact their families; and, once in detention, they were never brought before judicial authorities or advised of the anticipated length of detention. This evidence was corroborated by former security officials who described their role in arbitrarily detaining Eritreans.

73. Courts do exist in Eritrea, and some observers have noted that community courts appear to address minor local disputes. The commission recalls, however, that, in its first report, it found that violations of the right to a fair trial in criminal proceedings had been particularly blatant (A/HRC/29/42, para. 39). The commission's concerns are particularly acute with regard to the Special Court of Eritrea, which was originally established to try those accused of corruption and embezzlement. The commission's findings on judiciary were based on evidence provided by both victims and former judges. The commission therefore concludes that even those detainees convicted pursuant to judicial proceedings have been deprived of their liberty in violation of fundamental rules of international law.

74. The evidence demonstrates that arrests and detentions in violation of fundamental rules of international law have been, and remain, central to an Eritrean State policy designed not only to discourage dissent but to suppress independent or critical thought, and to instil fear in the population, with the purpose of maintaining control over Eritreans in a manner inconsistent with international law. The commission concludes that there are reasonable grounds to believe that Eritrean officials have committed the crime of imprisonment, a crime against humanity, in a persistent, widespread and systematic manner since May 1991.

3. Enforced disappearances

75. Article 7(2) of the Rome Statute prohibiting enforced disappearances reflects customary international law applicable throughout the period covered by the reports of the commission.

76. Almost all witnesses reported that those detained had been subjected to enforced disappearance. Many described the steps that they had taken to obtain information about the fate of their relatives, and they did so despite the risk to themselves: (a) they sought information from their immediate local authorities, and from personal contacts; (b) they contacted area medical facilities; (c) they knocked on the gates of each known detention centre in their region; and (d) some even contacted senior government officials.

77. Witnesses informed the commission that friends and family of disappeared persons were never able to obtain information officially. That some were able to obtain information unofficially, for example by bribing a prison guard or from released fellow detainees, does not absolve the State of its obligation to provide official information.

78. The commission previously concluded that the Government has imprisoned many Eritreans in violation of fundamental rules of international law since 1991. In most cases, the Government refused to provide information on the fate or whereabouts of those detained. In doing so, Eritrean officials intended to deprive victims of the protection of the

law for a prolonged period of time and to create fear among their relatives, as part of a government policy to maintain control over the Eritrean population in a manner contrary to international law. The commission concludes that there are reasonable grounds to believe that Eritrean officials have committed the crime of enforced disappearance, a crime against humanity, in a persistent, widespread and systematic manner since May 1991.

4. Torture

79. The international prohibition against torture is reflected in Article 7(2)(e) of the Rome Statute.

80. Nearly all those interviewed by the commission who had been held in one of the numerous detention centres in Eritrea stated that they had been tortured. They also explained that physical and mental suffering was inflicted to extract information, to punish and to create an atmosphere of fear. The commission documented other forms of torture that affect women. Information on torture from victims was corroborated by former security officers who took part in the crime. Torture is also widespread in the military to punish and to instil discipline.

81. The commission concludes that the use of torture was, and remains, an integral part of the Government's repression of the civilian population. It therefore finds there are reasonable grounds to believe that Eritrean officials have committed the crime of torture, against persons under their control, a crime against humanity, in a persistent, widespread and systematic manner since May 1991.

5. Other inhumane acts

82. Article 7(1)(k) of the Rome Statute sets out, as a separate crime against humanity, other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

83. In its first report, the commission described the widespread and systematic practice of punishing Eritreans on the basis of "guilt by association", in particular relatives and associates of government critics (both within Eritrea and outside the country), persons who evaded or deserted military/national service, Eritreans who left the country, persons who escaped from prison and members of non-authorized religious denominations (A/HRC/29/42, para. 75).

84. Although reprisals against third parties in Eritrea may take various forms, of greatest concern to the commission are those involving arbitrary detention, enforced disappearance or murder.

85. The commission concludes that most forms of reprisal against third parties, and in particular imprisonment, enforced disappearance and murder, cause great suffering, as well as serious injury to mental or physical health. The commission considers that the specific nature of reprisals against third parties is not captured by the crimes of imprisonment, enforced disappearance or murder. It also determines that reprisals are integral to the Government's efforts to maintain its authority in a manner contrary to international law. The commission therefore concludes that there are reasonable grounds to believe that Eritrean officials have committed other inhumane acts, a crime against humanity, in a persistent, widespread and systematic manner since May 1991.

6. Persecution

86. The international prohibition against persecution is reflected in articles 7(1)(h) and 7(2)(g) of the Rome Statute.

87. The commission has concluded that the Government perceives freedom of religion as a threat and has thus controlled religious expression. At various times, State officials have persecuted Muslims, Jehovah's Witnesses and members of other non-authorized religious groups, commonly known as *Pentes*. They have also persecuted, at various times, members of the Afar and Kunama ethnic groups.

88. The commission therefore concludes that there are reasonable grounds to believe that Eritrean officials have intentionally and severely deprived Eritrean *Pentes* and some Muslims of fundamental rights contrary to international law. Muslims were targeted in particular in the 1990s, again in 2007-2008, and following the Forto incident in 2013. Jehovah's Witnesses have been targeted since May 1991, and other non-authorized religious groups since no later than 2002. The Afar and Kunama ethnic groups were particularly targeted in the period from 1998 to 2001. Persecution has been an integral part of the Government's efforts to maintain its authority in a manner contrary to international law. The commission therefore finds that Eritrean officials have committed the crime of persecution, a crime against humanity, in a widespread and systematic manner since May 1991.

7. Rape

89. The international prohibition against rape is reflected in article 7(1)(g) of the Rome Statute.

90. The commission documented a significant number of cases of rape committed against both men and women in military training and detention centres. In committing this crime, perpetrators took advantage of the coercive environment and, in many cases, also used force or threat of force. The rapes were committed as part of the widespread or systematic attack against the Eritrean civilian population.

91. The commission therefore concludes that there are reasonable grounds to believe that rape, a crime against humanity, has been committed both in the context of military national service and in detention centres since 1991.

8. Murder

92. The international prohibition against murder is reflected in article 7(1)(a) of the Rome Statute.

93. The commission documented a number of individual and mass extrajudicial executions by Eritrean authorities since May 1991, including the killing of disabled veterans in 1994, killings of Muslims in 1997, at Adi Abeito in 2004, and killings at Wi'a in 2005. It also heard evidence about an official shoot-to-kill policy used against Eritreans attempting to flee the country through land or maritime borders, although the evidence shows that the policy has been implemented less rigorously in recent years.

94. Additionally, numerous witnesses heard by the commission described deaths resulting from torture and the inhumane conditions associated with detention centres and military service. Given that the evidence indicates that many of these deaths were the result of a callous indifference to human life on the part of Eritrean officials, the commission concludes that Eritrean officials are also liable for these deaths.

95. The commission concludes that killings have been, in some instances, part of the Government's campaign to maintain its control in a manner inconsistent with international law, and in others, an inevitable consequence of the campaign. There are therefore reasonable grounds to believe that Eritrean officials have committed murder, a crime against humanity, in a systematic manner since May 1991.

V. Accountability

96. The commission recalls that, in its resolution 29/18, the Human Rights Council extended the mandate of the commission of inquiry to investigate gross violations of human rights in Eritrea with a view to ensuring full accountability, including where these violations may amount to crimes against humanity.

A. Institutional accountability

97. Eritrea is an authoritarian State. Despite some attributes of a democratic State, including a 16-member cabinet, a judicial system and regional governors and assemblies, political power in Eritrea is concentrated in the hands of the President and of a small and amorphous circle of military and political loyalists. The President appears to maintain shadow structures of advisers who make policy decisions outside the formal governing structures. Government ministers, who are not in the President's inner circle, do not debate or create policy, but merely enforce executive will. The leading members of the ruling PFDJ party and the commanders of the security forces appear to report directly to the President, and each group has responsibilities parallel to those of appointed government officials. More generally, individual proximity to the President is a more reliable indicator of de facto influence and control than official title.

98. In assessing de facto power in Eritrea and its relationship to the gross human rights violations and crimes described in the present report, the commission bears in mind that Eritrea is a highly militarized society, and that military and security personnel are disproportionately represented within the President's inner circle. Both the National Security Office and the military have a central role in affairs of State. The commission has reasonable grounds to believe that the National Security Office is responsible for most cases of arbitrary arrest, enforced disappearance and torture in official and unofficial detention centres.

99. The military in Eritrea is responsible for the numerous abuses associated with the Government's military service programmes, including in training camps and military detention centres and at Eritrean borders. Military detention centres reportedly exist wherever there is a military encampment. Military commanders are also responsible for the use of conscripts as forced labour. It is the commission's understanding that the commanders of the country's five military zones, all generals, hold considerably more power than civilian governors, given that they control economic assets and military prisons in their zones.

100. The distinction between the PFDJ and the Government is blurred at the highest levels, given also that the President is Secretary-General of the party. The PFDJ leadership reportedly controls parastatal enterprises in Eritrea, and thus benefits from the use of conscript labour in them.

101. The police appear to have less influence, although some witnesses described cases of illegal detention in police stations. That government ministers tend to have less de facto power than the military, national security and the President's inner circle does not preclude the possibility that individual ministers closely associated with the President could be liable for the acts described in the present report.

B. Individual accountability

102. Following a review of its evidence, the commission is satisfied that there are reasonable grounds to believe that particular individuals, including officials at the highest levels of the State and the PFDJ, and commanding officers, bear responsibility for crimes against humanity and other gross human rights violations.

103. In order to assist future accountability mechanisms, the commission compiled files on a number of individuals it has reasonable grounds to believe bear responsibility for the crimes it has documented. These files include the names of suspects, information about the potential suspect's position and a summary of evidence compiled by the commission relating to the potential suspect. With regard to individual statements, the commission did not include any information that could identify witnesses. In compiling the files, the commission bore in mind that, under customary international law, there are various types of liability for the crimes described above. Liability may be attached not only to those who commit crimes directly but also to individuals who plan, order or instigate them. In addition, both civilian and military superiors may be liable for crimes committed by their subordinates. Future accountability mechanisms may wish to consider whether a joint criminal enterprise existed during the period covered by the commission in its reports, or any part of that period; for that reason, the commission also took into consideration information on individuals who may have contributed to such an enterprise. Lastly, the commission recalls that individuals who aid and abet the execution of a crime may themselves also be liable for the crime, and that providing such assistance may take a variety of forms.

104. The files and other relevant information are safeguarded in the commission's confidential database. The commission has requested that the United Nations High Commissioner for Human Rights grant access to information for purposes of accountability where confidentiality and protection concerns have been addressed.

105. In addition, the commission compiled files on victims of enforced disappearances, which contain, inter alia, information on their whereabouts. The files will be handed over to the Working Group on Enforced or Involuntary Disappearances for further action where confidentiality and protection concerns have been addressed.

C. Accountability mechanisms

106. At the World Summit of Heads of State and Government in 2005, world leaders reaffirmed that each individual State has the primary responsibility for protecting its population from genocide, war crimes, ethnic cleansing and crimes against humanity.[9]

107. Similarly, the Rome Statute recognizes that the exercise of national jurisdiction is not only a right but also a duty of States. Given its findings with regard to the rule of law in Eritrea, however, the commission is of the view that, without substantial institutional and legal reform, there is no genuine prospect of the domestic judicial system holding perpetrators to account in a fair and transparent manner. Far-reaching reform would enhance the viability of national accountability mechanisms.

108. Many States Members of the United Nations could exercise jurisdiction over Eritreans accused of crimes against humanity who are in their territories, in accordance with principles of universal or passive personality jurisdiction. Pursuing such prosecutions would be consistent with the principles set out in the preamble of the Rome Statute which,

[9] See General Assembly resolution 60/1.

inter alia, recalls "that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes".

109. The commission concludes that neither a hybrid tribunal nor a truth commission would be a viable option in the current circumstances. A regional mechanism could, however, be created.

110. Eritrea is not a State party to the International Criminal Court. The Court may therefore exercise jurisdiction only over the crimes committed in Eritrea if the State were to ratify the Rome Statute or if the Security Council were to refer the situation in Eritrea to the Court.

111. Lastly, acting under Chapter VII of the Charter of the United Nations, the Security Council could also impose targeted sanctions on individuals suspected of international crimes.

VI. Conclusions and recommendations

A. Conclusions

112. **The commission finds that there are reasonable grounds to believe that crimes against humanity have been committed in Eritrea since 1991. Eritrean officials have engaged in a persistent, widespread and systematic attack against the country's civilian population since 1991. They have committed, and continue to commit, the crimes of enslavement, imprisonment, enforced disappearance, torture, other inhumane acts, persecution, rape and murder.**

113. **In the absence of a constitution, an independent judiciary or democratic institutions in Eritrea, the commission has found no improvement in the rule of law. The commission has heard of no plans to hold national elections. While the commission was informed about the establishment of a committee to consider drafting a new constitution, it has received no further details.**

114. **The commission finds that the gross human rights violations it documented in its previous report persist, including arbitrary detention, enforced disappearances, torture, killings, sexual and gender-based violence, discrimination on the basis of religion and ethnicity, and reprisals for the alleged conduct of family members. In addition, many of those subjected to enforced disappearance in the past remain unaccounted for.**

115. **While the commission notes the State's increased engagement with the international community, there is no evidence of progress in the field of human rights. Human rights violations are cited as the main motivating factor for departure by the consistently large number of Eritreans fleeing the country, including by the rising number of unaccompanied minors.**

116. **Eritreans continue to be subjected to indefinite military/national service. The Government has recently confirmed that there are no plans to limit its duration to the statutory 18 months. Conscripts are drafted for an indefinite duration of service in often abusive conditions, and used as forced labour.**

117. **Political power and control are concentrated in the hands of the President and a small circle of military and political loyalists. The commission has reasonable grounds to believe that the top levels of the National Security Office and the military are responsible for most cases of arbitrary arrest, enforced disappearance and torture. Military commanders are also responsible for abuses committed in the**

context of the Government's military service programmes and at Eritrean borders. The leadership of the party and the military also benefit from the use of military/national service conscripts as forced labour.

B. Recommendations

118. The recommendations made by the commission in its first report remain valid. The commission highlights below those recommendations that are specifically relevant to its new mandate, and makes new ones.

1. Government of Eritrea

(a) General recommendations

119. The commission of inquiry recommends that the Government of Eritrea:

(a) Implement fully and without delay the Constitution of 1997; any amendments thereto should be made in a transparent and participatory manner, and take into account the State's international human rights obligations;

(b) Respect the obligations prescribed by the international human rights treaties to which Eritrea is a party, and ratify and implement other international human rights instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption.

(b) Governance and administration of justice

120. The commission also recommends that the Government of Eritrea:

(a) Ensure the separation of powers among the legislature, the executive and the judiciary, and establish the rule of law;

(b) Adhere to the principles of the supremacy of law, equality before the law, accountability to the law and legal certainty, and procedural and legal transparency;

(c) Establish without delay an independent, impartial and transparent judiciary, and ensure access to justice for all;

(d) Ensure that court processes, including judgements, are transparent, open and accessible to the public, and transmitted to accused persons immediately;

(e) Bring into force the Penal Code, the Criminal Procedure Code, the Civil Code and the Civil Procedure Code of May 2015, and amend them to reflect all international human rights standards;

(f) Allow for the creation of political parties, and hold free, fair and transparent democratic elections at all levels;

(g) Establish an independent national human rights institution with a protection mandate, including to investigate human rights violations;

(h) **Permit human rights defenders and independent civil society organizations, including gender-specific organizations, to operate without interference.**

(c) Military/national service

121. **The commission further recommends that the Government of Eritrea:**

(a) **Discontinue indefinite military/national service by limiting it to 18 months for all current and future conscripts, as stipulated by the Proclamation on national service;**

(b) **Put an immediate end to torture and ill-treatment, sexual violence and the enslavement of conscripts;**

(c) **Provide conscripts with humane living conditions, including with regard to food, health care and shelter;**

(d) **Cease the practice of using conscripts, detainees and members of the militia and reserve army as forced labour;**

(e) **Establish an independent complaint mechanism for conscripts to raise allegations of ill-treatment and to obtain redress;**

(f) **Ensure that military commanders responsible for human rights abuses are held accountable.**

(d) Arbitrary arrest, detention and enforced disappearances

122. **The commission recommends that the Government of Eritrea:**

(a) **Put an end to the practice of arrests and detention carried out without legal basis, and release immediately and unconditionally all those unlawfully and arbitrarily detained;**

(b) **Provide information on the fate and whereabouts of all those deprived of physical liberty;**

(c) **Review all cases of detainees who have been convicted of an offence in judicial or similar proceedings but were not accorded the procedural rights guaranteed in the international instruments to which Eritrea is party;**

(d) **Provide immediately information on all prisoners of war, and release them as soon as possible;**

(e) **Allow access to detainees by legal representatives and family members;**

(f) **Close all secret places of detention;**

(g) **Improve the conditions of detention to bring them into line with international standards and, in particular, ensure access to medical treatment for all detainees;**

(h) **Ensure that solitary confinement remains an exceptional measure of limited duration;**

(i) **Allow independent monitoring of all places of detention with regard to both legality and conditions of detention;**

(j) **Immediately permit unhindered access by independent monitors, including the Office of the United Nations High Commissioner for Human Rights and other recognized organizations, to all places of detention, official and unofficial, to**

monitor the legality of detentions and the treatment of detainees and prison conditions, and allow them to conduct regular and unannounced visits, and act promptly on their recommendations.

(e) Torture and other cruel, inhuman or degrading treatment or punishment

123. The commission also recommends that the Government of Eritrea put an immediate end to the use of torture and other forms of ill-treatment, establish adequate complaints mechanisms and ensure that prompt and effective investigations are conducted into all allegations of torture and ill-treatment with a view to bringing perpetrators to justice.

(f) Discrimination on religious or ethnic grounds

124. The commission further recommends that the Government of Eritrea:

(a) Respect freedom of religion or belief;

(b) Put an end to the practice of arbitrary arrest and detention of individuals based on their religious beliefs, in particular followers of specific religious groups, such as Jehovah's Witnesses, Pentecostals and other non-authorized religious groups, and release immediately and unconditionally all those unlawfully and arbitrarily detained;

(c) Ensure the protection of all minority ethnic groups in Eritrea, in particular the Kunama and the Afar.

(g) Sexual and gender-based violence

125. The commission recommends that the Government of Eritrea:

(a) Adopt a comprehensive strategy to eliminate stereotypes and harmful practices that discriminate against women and girls, including forced marriage, and ensure that the minimum age of marriage, set at 18 years of age, is strictly enforced;

(b) Take measures to ensure de facto gender equality, and address all forms of violence and discrimination against women, including sexual and gender-based violence, particularly within State institutions, such as military camps and places of detention;

(c) During mandatory military training, prohibit the assignment of women and girls to officials' quarters for forced domestic servitude, and implement a zero-tolerance policy for sexual abuse in the army and in detention centres;

(d) Ensure that all forms of sexual violence are criminalized in national law, and take appropriate legislative and policy steps to establish complaint mechanisms and to ensure the prompt and adequate investigation, prosecution and accountability of perpetrators, including by strengthening the capacity of the criminal justice system;

(e) Adopt gender-sensitive procedures to avoid reprisals and stigmatization of survivors of sexual and gender-based violence by, inter alia, establishing special protection units and gender desks in police stations, and provide rehabilitation and support services, including safe houses, legal aid resources and health care;

(f) Ensure that national laws and policies comply with the State's international human rights obligations and are non-discriminatory by, inter alia, permitting prosecution of marital rape in all circumstances and abolishing legal provisions criminalizing consensual same-sex sexual activity.

(h) Reprisals against third parties

126. **The commission also recommends that the Government of Eritrea put an immediate end to the various forms of harassment and reprisals against relatives and associates of persons accused of wrongdoing.**

(i) Killings

127. **The commission further recommends that the Government of Eritrea put an end to extrajudicial killings, including of those fleeing the country.**

(j) Accountability

128. **The commission recommends that the Government of Eritrea:**

(a) **Ensure accountability for past and persistent human rights violations and crimes, including enslavement, imprisonment, enforced disappearance, torture, and other inhumane acts, persecution, rape and murder, through the establishment of independent, impartial and gender-sensitive mechanisms, and provide victims with adequate redress, including the right to truth and reparations;**

(b) **Ratify and implement the Rome Statute of the International Criminal Court;**

(c) **Cooperate with, and accept and implement the decisions of, any accountability mechanisms.**

2. **Human Rights Council**

129. **The commission recommends that the Human Rights Council:**

(a) **Renew the mandate of the Special Rapporteur on the situation of human rights in Eritrea, and request the mandate holder to, inter alia, promote and report on the implementation of the present recommendations, and provide the mandate holder with the necessary additional human and financial resources;**

(b) **Bring to the attention of relevant special procedures, for appropriate action, the human rights violations and crimes identified by the commission in its reports, including the situation of minorities, such the Kunama and the Afar;**

(c) **Keep the situation in Eritrea on its agenda, and invite the United Nations High Commissioner for Human Rights to report periodically on the situation of human rights;**

(d) **Transmit the present report to the General Assembly, the Secretary-General and the Security Council for follow-up on its recommendations;**

(e) **Support the establishment of a structure by the Office of the United Nations High Commissioner for Human Rights with a protection and promotion mandate, in particular to assist in ensuring accountability for human rights violations in Eritrea, especially where such violations amount to crimes against humanity.**

3. **Office of the United Nations High Commissioner for Human Rights**

130. **The commission recommends that the Office of the High Commissioner report annually to the Human Rights Council and other appropriate United Nations organs on the situation of human rights in Eritrea, and assist the Government of Eritrea in the implementation of the recommendations made by the commission, and those made at the sessions of the Working Group on the Universal Periodic Review and by the treaty bodies and special procedures.**

4. General Assembly

131. The commission recommends that the General Assembly put the human rights situation in Eritrea on its agenda.

5. Security Council

132. The commission recommends that the Security Council:

(a) Determine that the situation of human rights in Eritrea poses a threat to international peace and security;

(b) Refer the situation in Eritrea to the Prosecutor of the International Criminal Court;

(c) Impose targeted sanctions, namely travel bans and asset freezes, on persons where there are reasonable grounds to believe that the said persons are responsible for crimes against humanity or other gross violations of human rights.

6. African Union

133. The commission recommends that the African Union establish an accountability mechanism, under the aegis of the African Union and supported by the international community, to investigate, prosecute and try individuals reasonably believed to have committed crimes against humanity.

7. Member States and international organizations

134. The commission recommends that Member States and international organizations:

(a) Keep Eritrea under close scrutiny until consistent and tangible progress with regard to the situation of human rights is evident, and ensure the centrality of human rights in all engagement with the State;

(b) Insist on the implementation of the decision made on 13 April 2002 by the Eritrea-Ethiopia Boundary Commission on the delimitation of the border;

(c) Keep Eritrea on the agenda of the International Labour Organization and continue to address the issue of forced labour;

(d) Assist Eritrea in addressing serious legislative and institutional weaknesses by strengthening its judiciary, establishing independent institutions and reforming its security sector through bilateral and multilateral development cooperation, in accordance with the human rights due diligence policy on United Nations support to non-United Nations security forces;

(e) Provide Eritrean nationals seeking protection with refugee status in accordance with the provisions of the international law governing asylum, and in particular the Convention relating to the Status of Refugees;

(f) Exercise jurisdiction over crimes against humanity when any alleged offender is present on the territory of a Member State or extradite him or her to another State in accordance with its international obligations;

(g) Increase attention and the resources allocated to the situation of human rights in Eritrea by strengthening engagement with the Government with the aim of implementing the present recommendations and those made during the sessions of the Working Group on the Universal Periodic Review and by other human rights mechanisms.

8. Transnational corporations

135. **The commission recommends that transnational corporations operating or planning to operate in Eritrea conduct human rights impact assessments that specifically address the possibility that Eritrean contractors will rely on conscript labour, difficulties relating to freedom of association and expression in Eritrea, and the absence of financial transparency.**

Annex I

Letter dated 7 December 2015 from the commission of inquiry addressed to the Permanent Representative of Eritrea to the United Nations

Dear Mr. Ambassador,

Thank you for your willingness to engage with me and my fellow Commissioners on 2 November 2015. I hope we can build on this first encounter and continue the discussion.

As stated during our meeting, I would be grateful for any documentation your Government may wish to share with the Commission about developments noted by you during your statement delivered during the interactive dialogue with the Commission at the Third Committee of the General Assembly on 29 October 2015.

Our Secretariat received with thanks the Penal Code and the Criminal Procedure Code, and is looking forward to also receiving the Civil Code and its procedural code in due course.

Furthermore, we are interested in documentation and information about the drafting of a new constitution, as well as the duration of the national service for current and future conscripts.

We would also welcome any additional updates and positive developments you might wish to highlight with regard to the human rights situation in Eritrea since the finalisation of our first report.

I take this opportunity to reiterate our continued desire to visit Eritrea as stated during our meeting and in previous correspondence, most recently in my letter of 28 September 2015 to H.E. Mr. Osman Saleh Mohammed, Minister of Foreign Affairs. I hope that the Government of Eritrea will invite the members of the Commission and its staff to visit Eritrea, in line with Human Rights Council resolution 29/18.

I look forward to hearing from you in due course. For any clarifications I can be contacted through the Office of the High Commissioner for Human Rights or via email (coieritrea@ohchr.org).

I remain,
Yours sincerely,

Mike Smith
Chair
Commission of Inquiry
on Human Rights in Eritrea

His Excellency
Mr. Girma Asmerom
Permanent Representative of Eritrea
Permanent Mission of Eritrea
New York

Annex II

Letter dated 24 February 2016 from the commission of inquiry addressed to the Minister for Foreign Affairs of Eritrea

Excellency,

I write to you in my capacity as the Chair of the United Nations Commission of Inquiry on Human Rights in Eritrea.

As requested by the Human Rights Council (HRC), the Commission will present a written report at the thirty-second session of the HRC in June 2016, and at the seventy-first session of the General Assembly in September 2016.

I wish to reiterate our continued desire to visit Eritrea as stated in previous correspondence, most recently my letter to you of 28 September 2015 and the letter of 7 December 2015 to H.E. Mr. Girma Asmerom, Permanent Representative of Eritrea to the United Nations in New York.

We would be most grateful if the Government of Eritrea would extend an invitation to members of the Commission and its staff to visit Eritrea, in line with Human Rights Council resolution 29/18. Such a visit could be organised at any time prior to the finalisation of our report for the thirty-second session of the HRC.

I look forward to hearing from you in due course. For any clarifications I can be contacted through the Secretariat of the Commission (coieritrea *at* ohchr.org).

Please accept, Excellency, the assurances of my highest consideration.

Mike Smith
Chair, Commission of Inquiry
on Human Rights in Eritrea

His Excellency
Mr. Osman Saleh Mohammed
Minister of Foreign Affairs of Eritrea
Asmara
Eritrea

United Nations A/HRC/32/48

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Agenda item 4
Human rights situations that require the Council's attention

Report of the Special Rapporteur on the situation of human rights in Belarus

Note by the Secretariat

In the present report, the Special Rapporteur on the situation of human rights in Belarus describes the developments in the situation of human rights in Belarus since his previous report (A/HRC/29/43), and assesses the State's overall compliance with recommendations made by the United Nations human rights mechanisms since 2010. The findings show that, except for the recent release of political prisoners on the eve of the 2015 presidential election, no improvements have been introduced in the systemic, entrenched curtailment of basic human rights that triggered the establishment of the mandate of the Special Rapporteur in 2012. The current level of scrutiny by the United Nations of compliance by Belarus with its human rights obligations must therefore continue, especially in view of the forthcoming parliamentary elections. The Special Rapporteur concludes the report with recommendations, with the forthcoming parliamentary elections of September 2016 in mind.

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Contents

		Page
I.	Introduction	3
	A. Background	3
	B. Methodology	5
II.	Rule of law and legal framework	5
III.	Engagement with the international human rights system	6
IV.	Human rights concerns expressed by United Nations human rights mechanisms of the and degree of compliance	7
	A. Freedom of opinion and expression, and freedom of the media	7
	B. Freedom of association	9
	C. Freedom of peaceful assembly	10
	D. Situation of human rights defenders	12
	E. Civil society	13
	F. Torture and other cruel, inhuman or degrading treatment or punishment	14
	G. Arbitrary arrest and detention, and enforced disappearances	15
	H. Death penalty	16
	I. Electoral system	17
	J. Conditions of work	19
	K. Discrimination	19
	L. Cultural rights	21
V.	Conclusion and recommendations	21

I. Introduction

A. Background

1. The present report is submitted to the Human Rights Council pursuant to its resolution 29/17. Although the report is based on information received until 31 March 2016, it covers a period that goes beyond the previous report of the Special Rapporteur (A/HRC/29/43), given that it takes stock of the level of compliance by the Government of Belarus with the recommendations addressed to it in the past five years by United Nations human rights mechanisms. By doing so, the Special Rapporteur has endeavoured to assess overall changes, or absence of change, in the legal framework and in the practices of the State authorities with regard to human rights and fundamental freedoms.

2. The present review of the results of United Nations human rights advocacy in Belarus is offered by the Special Rapporteur between two crucial events: the presidential election of 2015, and the parliamentary elections scheduled for September 2016. In the wake of the presidential election held in December 2010, the Government of Belarus used massive violence against opposition leaders and their supporters. The incarceration of seven presidential candidates was followed by the systematic and deliberate curtailment of an extensive list of basic human rights.

3. In 2012, the Human Rights Council, on the basis of a report of the United Nations High Commissioner for Human Rights (A/HRC/20/8), established by its resolution 20/13 the mandate of Special Rapporteur on the situation of human rights in Belarus, and requested the mandate holder to report annually to the Council and the General Assembly. The Council has since renewed the mandate three times, for one year, in its resolutions 23/15, 26/25 and 29/17. Other United Nations human rights bodies and mechanisms, including the Working Group on the Universal Periodic Review, have also made numerous recommendations aimed at improving the situation of human rights and the Government's compliance with the State's international obligations.

4. The Special Rapporteur welcomed the release of six political prisoners (Mikalai Statkevich, Mikalai Dziadok, Ihar Alinevich, Yauhen Vaskovich, Artsiom Prakapenka and Yury Rubtsou) before the presidential election of 11 October 2015. The Special Rapporteur notes that the release was welcomed by intergovernmental organizations and by human rights organizations.

5. The Special Rapporteur also notes that the presidential election of 2015 was held without police violence and without the arrest of political opponents, unlike the previous presidential election of 2010.

6. While expressing relief at these concessions, the Special Rapporteur is concerned that release of the above-mentioned political prisoners was conducted in the same arbitrary manner as their incarceration. Furthermore, the release in no way supported the freedom of election, given that those released have not had their civil or political rights restored. As a result, the seven presidential candidates detained after the 2010 election, like other long-term political prisoners pardoned in 2014 (see A/HRC/29/43, para. 63), for example Ales Bialatski, were unable to stand for election in 2015.

7. Notwithstanding the absence of violence by law enforcement bodies, the conduct and results of the 2015 presidential election were assessed by the Organization for Security and Cooperation in Europe (OSCE) as in no way less restrictive or more reliable than the

election held in 2010.[1] Therefore, the release of the prisoners on the eve of the election without restoring their right to stand for election may have only deepened the climate of fear that has characterized governance for decades. As reported by the Special Rapporteur in several previous reports, the repressive legal framework has only tightened since 2010, as has the systematic use of criminal and administrative sanctions against opponents and critics, or any expression of dissent, even when peaceful.

8. Both the conduct and the results of the September 2016 parliamentary elections will constitute a test of the resolve of the President to reform the governance of human rights in Belarus. The Parliament of Belarus is the only one in the European continent that does not muster any modicum of opposition, merely rubber-stamping the President's decisions. This has been the case of every Parliament in the past 20 years, regardless of whether the opposition attempted to participate in or decided on a boycott in protest against the restrictions.

9. The Special Rapporteur hopes that the next parliamentary elections will be not only free of violence and repression but will also allow for political opinions other than those of the President to be aired, and as a result political forces will be able to win seats in a number proportionate to their independently verified votes.

10. The persistent presence in the criminal code of the death penalty and its repeated application remain another pattern of non-compliance with human rights standards that sets the State apart on the European continent. The Special Rapporteur deplores the use of the capital punishment by tribunals. The most recent sentence thereof was handed down on 16 February 2016, one day after the Council of the European Union lifted most of its sanctions against individuals and companies from Belarus.

11. During the period under review, the Special Rapporteur noted no change in the "permission-based" regime governing freedoms of assembly, expression and association, and other human rights. This entrenched system is, in the Special Rapporteur's view, the basis of the prevailing climate of fear that deters any attempt to express views or to organize assemblies or associations that the Government deems undesirable. It consists in the de jure criminalization of any public activity that has not gained previous authorization from the administration. The authorities themselves decide in every case whether de jure criminalization should be made a de facto one, and in what form, on a wide scale of punishment ranging from administrative to penal, from fines to incarceration, and to loss of unrelated civil rights. All changes in the past two decades, including the most recent instructions given to law enforcement bodies, have remained within the scope of this system, moving forwards and backwards alternatively while the Government has retained full control over public life.

12. On 4 May 2015, Belarus underwent its second universal periodic review. While the Special Rapporteur was encouraged by the level of engagement of the authorities with the process, he noted that the recommendations made by Member States were similar or even identical to those made during the previous review, reflecting the absence of change in the overall situation of human rights in the country. In particular, no progress was made on any of the recommendations accepted by the State involving civil society organizations other than those established by the Government.

13. A national human rights institution has yet to be created, as recommended by the Working Group on the Universal Periodic Review in 2010 and again in 2015 (see A/HRC/15/16 and A/HRC/30/3). A national institution in accordance with the Paris Principles would assist the Government in addressing shortcomings and pave the way for

[1] OSCE, "Belarus, Presidential Elections, 11 October 2015: Final Report", 28 January 2016.

gradual compliance with international standards. The Special Rapporteur deplores the fact that no substantive progress has been made towards the creation of such an institution.

14. The recent release of political prisoners and the orders given to law enforcement bodies to refrain from use of violence against peaceful demonstrators should not blur the reality of the overall situation of human rights. In the assessment of the Special Rapporteur, the authorities, since the presidential election, have not shown any resolve to substantially ease the systemic restrictions on human rights, nor have they initiated the recommended cooperation with the international human rights mechanisms.[2] The Special Rapporteur makes his recommendations with these considerations in mind.

B. Methodology

15. The Special Rapporteur has not enjoyed any cooperation with the authorities of Belarus, despite repeated requests made by the mandate holder over the years. The most recent request, dated 17 February 2016, addressed to the Permanent Representative of Belarus to the United Nations Office at Geneva, to conduct a visit to Belarus remained unanswered as at 31 March 2016. The Special Rapporteur deplores this situation, given that engagement, even incremental, with the mandate holder would allow him to obtain first-hand information, and would demonstrate goodwill in addressing the systemic human rights issues of Belarus.

16. Given that in situ visits were not possible, the work of the Special Rapporteur continues to be based on information received from various partners: rights-holders, victims of violations and their relatives, civil society actors, representatives of international and regional organizations, and diplomats. While seeking this information, the Special Rapporteur has continued to be guided by the principles of independence, impartiality and objectivity. The sources of information necessary to conduct the analysis contained in the present report are indispensable. The Special Rapporteur attaches particular importance to the safety and security of sources of information.

17. As in previous reports, the Special Rapporteur describes the main human rights concerns in Belarus since the previous report submitted to the Human Rights Council. In addition, as mentioned above, his analysis focuses on the degree of compliance of Belarus with the numerous recommendations made by the human rights mechanisms of the United Nations. The clustering of recommendations follows the human rights mechanisms of the United Nations since 2010, year of the first review of Belarus by the Working Group on the Universal Periodic Review.

II. Rule of law and legal framework

18. After the presidential election of October 2015, no legislative action has been initiated to improve the situation of human rights; the oppressive laws and practices remain in force.

19. Presidential decrees continue to be used as the main legislative mechanism in Belarus (see A/HRC/26/44, para. 21 and A/HRC/29/43, para. 21). The Parliament, where any form of opposition is still precluded, merely approves the legislation presented to it.

[2] See Office of the United Nations High Commissioner for Human Rights "Statement by the Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti", 9 February 2016.

Presidential decrees may overrule existing legislation on any issue, including constitutional law.

20. The presidential administration also overrides the principle of the separation of powers by determining the policies of the executive, preparing draft legislation adopted by Parliament and influencing the courts by providing conceptual instructions concerning State policy ("directives"). The legal framework in place does not allow for change unless it is based on the political will of the President. As a result, basic civil and political rights, like economic, cultural and social rights, whether or not included in the Constitution or in international treaties, are not enforceable by the citizens, even though the Government may refer to them rights when executing the State's policies.

21. The Special Rapporteur remains concerned by the system of appointment of judges and prosecutors, as described in his previous report to the Human Rights Council (A/HRC/29/43, paras. 34-40). The President may single-handedly promote or demote any judge or prosecutor. The absence of any separation between the judiciary and the executive power was already underlined in the report of the Working Group on the Universal Periodic Review in 2010 (A/HRC/15/16 98.25), and again in 2015 (A/HRC/30/3, para. 127.74-75). In 2012, the Committee on Economic, Social and Cultural Rights urged Belarus to guarantee the full independence and impartiality of the judiciary in line with the Basic Principles on the Independence of the Judiciary, including by establishing an independent body responsible for the appointment, promotion, suspension and removal of judges (E/C.12/BLR/CO/4-6, para. 6). To the knowledge of the Special Rapporteur, such a body had not yet been established (as at 31 March 2016).

22. Defence lawyers, despite numerous recommendations by United Nations mechanisms, continue to be fully dependent on the Ministry of Justice, which controls entry to the legal profession. Arbitrary, politicized claims of violations of rules, such as cooperation with United Nations human rights mechanisms, can lead to disciplinary removal from the bar association at any time and without recourse to appeal.

23. The Special Rapporteur reiterates his calls for the engagement of the Government of Belarus in a broad reform to bring legislation into compliance with its international human rights obligations. He recommends that the Government, inter alia, repeal article No. 193.1 of the Criminal Code, which criminalizes membership in unauthorized associations and public events, reform its oppressive media governance, in consultation with all media and civil society actors, and establish a legal moratorium on capital punishment with a view to its abolishment.

III. Engagement with the international human rights system

24. The Working Group on the Universal Periodic Review examined Belarus on 4 May 2015, for the second time. The compilation prepared by the Office of the United Nations High Commissioner for Human Rights (A/HRC/WG.6/22/BLR/2) contained information on the level of engagement of the authorities with the United Nations human rights system as at 4 March 2015. Since that date, the Special Rapporteur has noted no further engagement. The authorities refused to support recommendations to extend a standing invitation to special procedure mandate holders (A/HRC/30/3, paras. 130.25 – 130.38).

25. The Special Rapporteur notes that the Government of Belarus examined and supported recommendations made by the Working Group on the Universal Periodic Review on considering or facilitating ratification of or accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (A/HRC/30/3, paras. 127.2 – 127.5) and the Convention on the Rights of Persons with Disabilities (A/HRC/30/3, paras. 127.7 – 127.11). The Special Rapporteur points out,

however, that the Government of Belarus supported similar recommendations made during the first cycle of the universal periodic review (see A/HRC/15/16, paras 97.1 and 97.2), and that no tangible progress has been made since, besides the signing of the Convention on the Rights of Persons with Disabilities by Belarus in September 2015.

26. In 2016, Belarus is scheduled to be reviewed by the Committee on the Elimination of Racial Discrimination and by the Committee on the Rights of Persons with Disabilities. Belarus has submitted its combined report to the Committee on the Rights of Persons with Disabilities; the review by the Committee will be based on the replies of the State, to be submitted by 24 May 2016, to the preliminary list of issues.

27. Since the previous report of the Special Rapporteur, a number of cases have been filed under the Optional Protocol to the International Covenant on Civil and Political Rights. At its 115th session, in October 2015, the Human Rights Committee adopted views on six communications with regard to Belarus, most of which concerned violations of the freedoms of expression, assembly and association.[1]

28. The Special Rapporteur is aware that a number of workshops and seminars organized by the Government of Belarus have been held with the support of international partners. The practice of holding short events on human rights issues raised by mechanisms (see notably A/HRC/30/3, para. 14) has been in place in Belarus for many years; nonetheless, the Special Rapporteur does not have any information suggesting that tangible changes have ever been made to the legal framework or the practices of State officials following such gatherings. For example, a conference on the death penalty was held in Minsk on 10 March 2016. The 1-day event, co-organized with the country office of the United Nations Development Programme and the Embassy of the United Kingdom of Great Britain and Northern Ireland in Belarus, featured a number of high-level speakers. The Special Rapporteur was not invited.

IV. Human rights concerns expressed by United Nations human rights mechanisms, and degree of compliance

A. Freedom of opinion and expression, and freedom of the media

29. During the period under review, despite consistent recommendations made by the Special Rapporteur and several United Nations human rights mechanisms over the years, freedom of expression in Belarus remained severely curtailed by the only national media in Europe to be controlled exclusively by the Government, control which extends to radio, television, the press and Internet-hosted media. No legal changes have been brought or prepared to alter the oppressive governance of the media. The system of registration of media outlets remains permission-based, rather than notification-based, as recommended, making it effectively impossible for start-ups to operate without consent from the authorities. The authorities have the power to warn and suspend any type of media entity, including Internet-hosted ones, by merely referring to content as "harmful to the State". The media entity concerned may appeal such decisions only before administrative courts, which consider only whether the authorities had the power to issue such injunctions. As a

[1] See CCPR/C/115/D/2019/2010 (Anatoly Poplavny v. Belarus); CCPR/C/115/D/2016/2010, (Leonid Sudalenko); CCPR/C/115/D/2133/2012, (Marina Statkevich and Oleg Matskevich v. Belarus); CCPR/C/115/D/1996/2010 (Ivan Kruk v. Belarus); CCPR/C/115/D/2289/2013 (Pavel Selyun v. Belarus); CCPR/C/115/D/2011/2010 (Vladimir Romanovsky v. Belarus).

consequence, the courts regularly approve the injunctions without even taking actual media content into consideration.

30. Pluralism of the media and freedom of expression will play a crucially important role in the parliamentary elections to be held in September 2016. The recommendations made by the Office for Democratic Institutions and Human Rights of OSCE about media governance in its reports on the previous parliamentary elections, in 2012 and the presidential election in 2015[4] remain to be implemented.

31. In July and August 2015, seven journalists were fined for having cooperated with foreign mass media without accreditation. On 12 January 2016, journalist Larysa Shchyrakova was punished by a fine under article No. 22.9 of the Administrative Code. Kanstantsin Zhukouski, a freelance journalist, was tried in absentia and ordered to pay a large fine by the Kalinkavichy District Court.[5]

32. A worrying development was reflected in a recent statement by the Minister for the Interior, who claimed on 1 March 2016 that some media could be characterized as having launched an "information war" against the police, which, would therefore respond by all legal means, including legal actions.

33. Similarly, when on 2 March 2016 the Minister for Information received two journalists who presented him with an appeal signed by 156 people to protest against police violence towards journalists, he referred to the case of Pavel Dobrovolskiy, and justified the police actions against him.

34. The Special Rapporteur recalls that the harassment of journalists has been a constant practice by the regime, and recommended that judicial authorities cease these practices (see A/70/313). The statements made by the Ministers do not reflect any change in approach. As shown in the above cases, harassment can come in the form of arbitrary arrests, administrative searches, the confiscation of working tools and materials, fines, tax inspections or a summons for questioning.

35. The above-mentioned practices of intimidation by legal action against journalists had already been noted in 2010, when at its first universal periodic review, it was recommended that Belarus review its national legislation to ensure compliance with the freedom of expression, and ensure that the freedom and independence of the press were in line with European and international standards (A/HRC/15/16, paras. 98.27 – 98.32).

36. Five years later, during the second cycle of the universal periodic review, recommendations were again made that the State review its legislation to guarantee greater respect for the freedom of expression (A/HRC/ 30/3, paras. 129.57 – 129.65). Belarus was called upon to improve the overall situation of media freedom, and to amend the law on mass media to bring it into line with international standards and with the recommendations made by the OSCE Representative on Freedom of the Media.

37. The Special Rapporteur has made numerous recommendations regarding freedom of opinion and expression, especially on the freedom of the media, in his most recent report to the General Assembly (A/70/313), which focused on the issue.

38. It is significant that, in its report on the presidential election in 2015, the election observation mission of the OSCE Office for Democratic Institutions and Human Rights recommended that the authorities reconsider the requirement for accreditation and allow

[4] See OSCE, "Belarus, Parliamentary Elections, 23 September 2012: Final Report", 14 December 2012, and "Belarus, Presidential Elections, 11 October 2015: Final Report", 28 January 2016.

[5] See Viasna Human Rights Center, "Human Rights Situation in Belarus in 2015: Analytical review".

journalists working for domestic media to also work for foreign media or Belarusian media based abroad.

39. The television channel Belsat, which broadcasts in Belarusian language from Poland, submitted a number of documents to the Ministry for Foreign Affairs on 21 March 2016, seeking accreditation for their journalists and cameramen to work from Belarus. At the time of finalization of the present report, no answer had been received from the Ministry. Belsat has been seeking accreditation for several years (see A/HRC/29/43, para. 84).

40. The Special Rapporteur underlines the fact that, while it harasses independent media, the Government takes measures to promote newspapers owned by the State. For example, the management of one company and employees of Salihorsk enterprises were ordered to subscribe to a number of "State-controlled publications".[6]

41. The Special Rapporteur highlights the situation of freedom of expression of artists in Belarus. He notes that the Belarus Free Theatre is still outlawed. The company, whose plays address contemporary social issues in Belarus, continues to stage performances, but in secrecy, announcing where they will be held(generally private apartments) only on the same day. The members of the company and their supporters have been allegedly harassed by the authorities.

42. The fact that the winner of the 2015 Nobel prize for literature, Svetlana Alexievich, was unable to publish all of her work in Belarus illustrates how thoroughly freedom of opinion, information and art is curtailed, by a barrage of punitive laws, administrative regulations and governmental control.

43. On 29 January 2016, youth activists Viachaslau Kasinerau, Maksim Piakarski and Vadzim Zharomski, who in August 2015 had drawn creative graffiti on buildings, were sentenced to large fines by the Frunzienski District Court. Once the individuals whose property had been defaced by the graffiti had received full compensation, they filed a request to have the case dismissed. The case could have been dropped, but prosecution rather continued, on the charge of "hooliganism" (Criminal Code, art. 339). During the hearings, the prosecutor allegedly referred to materials, some of which suggest that the investigators had tapped the defendants' mobile telephones in May 2015, even before the graffiti were drawn.

B. Freedom of association

44. Since the establishment of the mandate, the Special Rapporteur has recommended several ways to ease the systematic restrictions of the right to freedom of association, consisting of laws, institutional practice and recurring arbitrary violations.

45. At its universal periodic review in 2010, Belarus accepted various recommendations relating to improving respect for freedom of association and legal conditions for the activities of civil society. Nonetheless, since 2010, new legal acts and laws have been adopted that restrict freedom of association and virtually disable civil activism.

46. The Special Rapporteur regrets the fact that no new registrations have been accepted since the amendments to the law on public associations and on political parties were adopted on 20 February 2014, owing mainly to the numerous remaining administrative hurdles and a lack of political will.

[6] Viasna Human Rights Center, Human Rights Situation in Belarus: December 2015, 4 January 2016.

47. Three main restrictions undermine the right to freedom of association: the rules on registration; the widespread refusal of registration; and the criminalization of unregistered civil activities and funding. Most notably, article No. 93.1 of the Criminal Code criminalizes any activity undertaken by a non-registered non-governmental organization and its "members". All public activities and events require prior authorization from bodies at different government levels, which exercise their power in full discretion. The process of applying for registration is highly obstructive. Civil society groups are repeatedly and arbitrarily denied registration on various grounds, many of which are not even mentioned in the relevant law or regulations.

48. The Special Rapporteur continued to receive information on the difficulties encountered by many who wished to create groups freely. For instance, on 1 December 2015, the Minsk City Executive Committee denied State registration to the cultural and educational public association New Alternative. The reason given for the decision was that the organization's name did not correspond to the objectives specified in its charter.

49. Also in December 2015, the civil campaign "Tell the Truth" was, for the fourth time, denied State registration as a public association. The Ministry of Justice claimed that some of the annexes to the request were lacking signatures. When representatives of the movement asked for information on what exactly had been omitted, the registration authority refused to reply.

50. On 17 February 2016, a representative of the Belarusian State Medical University allegedly declared that three non-governmental organizations that addressed student matters were "unauthorized" and "illegal". Subsequently, instructions were given to hold "preventive conversations" with the students to warn them against participation in the activities of the organizations, described as hosting anti-government elements. The Special Rapporteur is appalled to see the administration of an education entity exercise pressure to limit the freedom of association, which is further proof of the systemic oppression in Belarus.

51. The above cases contradict the commitments made by Belarus during its review by the Working Group on the Universal Periodic Review to examine a number of recommendations on improving the exercise of and guaranteeing freedom of association (see A/HRC/30/3, paras. 129.61, 129.64 and 129.87, inter alia), in particular by the repeal of article No. 193.1 of the Criminal Code.

52. The Committee on the Elimination of Discrimination against Women had also recommended in 2011 that Belarus de-criminalize participation in the activities of unregistered public associations, including women's associations, and create an enabling environment and ensure funding opportunities for women's associations (CEDAW/C/BLR/CO/7, para. 28).

C. Freedom of peaceful assembly

53. The Special Rapporteur welcomes the fact that public gatherings have not triggered violence or immediate arrests by the police since October 2015. Disproportionate administrative fines seem to have been prioritized over immediate arrests by recent instructions, while both approaches remain legal. The Minister for the Interior, in a statement issued on 1 March 2016, explained that Ministry has "modified its approach to unauthorized demonstrations". The reason for the shift was "a different direction in foreign and interior policy"; the Minister stressed, however, that the law and its aim to discourage unwelcome public gatherings had not changed.

54. The number of individuals administratively prosecuted and fined for participating in unregistered events has not, however, declined since the presidential election in October. *De jure* criminal status, in accordance with article 193.1 of the Criminal Code, remains unchanged. The complicated authorization procedure for public gatherings and the broad scope available to authorities to determine whether a location is suitable for holding demonstrations still leads to the arbitrary denial of public events.[7] Local authorities consistently refuse permission for assemblies, even in places that they had previously allocated to this purpose in their own decisions. Such situations have been reported in Biaroza, Vitsebsk, Baranavichy and other cities.[8]

55. Counter to the expectations raised by the lack of immediate repression of rallies during the election period, administrative charges were brought retroactively after the election against the organizers of public rallies held in August, September, October and November, who were given substantial fines.[9] Viachaslau Siuchyk was sentenced in absentia to a large fine for having participated in the demonstrations held on 10 and 11 October, in Freedom Square and Kastrychnitskaya Square on the day of the presidential election). The co-chair of the Christian Democratic (BCD) party, Pavel Seviarynets, was sentenced in absentia to a fine for involvement in a procession on 24 November 2015.

56. Since January 2016, new administrative charges have been brought against opposition activists for their involvement in street protests and pickets.

57. On 5 January, Maksim Viniarski was given a large fine for taking part in a student march held on 2 December 2015. On the same day, Leanid Kulakou was fined for staging a picket on International Human Rights Day.

58. On 19 January, Aliaksandr Makayeu was fined under article 23.34 of the Administrative Code for participating in a march held on 24 November 2015 in Minsk to mark the anniversary of the referendum of 1996 and to honour the memory of the politicians who disappeared in 1999 and 2000. Maksim Viniarski was charged for the same activities and ordered to pay a large fine. One of the organizers of the student march, Hleb Vaikul, was expelled from the Belarusian State University. The activist stated that the harassment was linked to his civil activities.

59. The repeated protest rallies held by small entrepreneurs and supporters against the imposition of new trading restrictions have resulted in numerous new court cases and sentences, mostly fines. Such rallies were held in Minsk, Baranavichy, Viciebsk, Homiel and Polac in January and February 2016.

60. In March, the Minsk Central District Court handed down fines to Maksim Viniarskiy, Leonid Kulakov, Vyacheslav Sivchik, Pavel Severinets and Pavel Sergey. Representatives of the United Civil Party face further charges related to administrative offences for their participation in rallies of solidarity with the entrepreneurs.

61. The Special Rapporteur recalls that, prior to the presidential election in 2015, the authorities in Belarus had continued to restrict the legal definition of mass events, invoking the restrictions applicable to public gatherings already contained in the Law on Mass Gatherings (A/HRC/29/43, para. 87). New restrictions had been passed to broaden the definition of "mass events", and on where demonstrations may be held. The dissemination

[7] Civil Rights Defenders, "Human Rights in Belarus", 7 July 2015.

[8] Belarusian Helsinki Committee, Analytical report, July – September 2015 (available from http://belhelcom.org/en/node/19821).

[9] Ibid.

of information on public gatherings was banned until the authorities had approved them.[10] As a result, the scope of "unauthorized events" that trigger administrative liability had grown to include distributing printed materials or carrying out photographic shoots. There had also been reports of cases of detention and prosecution for participating in events that had already been authorized.[11]

62. In 2014, the Special Rapporteur called upon the authorities of Belarus to end the obstruction, punishment and harassment of non-governmental organizations making use of their right to peaceful assembly (A/69/307, para. 93 (k)). In 2015, the Special Rapporteur noted the adoption of further restrictions to the right to gather in public (A/HRC/29/43, para. 87). Regrettably, the limitations to the exercise of the freedom of peaceful assembly have not been lifted, as the above examples illustrate.

63. At the first universal periodic review of Belarus, in 2010, it had been recommended that the State amend its legislation on mass events to ensure compliance with the International Covenant on Civil and Political Rights and simplify issuance of permissions for holding assemblies (A/HRC/15/16, para. 98.34). The recommendation was reiterated in 2015, based on the lack of progress made in amending legislation on public association and mass gatherings for it to comply with international standards (see A/HRC/30/3, paras. 129.57, 129.61, 129.65, 129.71, 129.77, 129.90 and 129.92-94).

D. Situation of human rights defenders

64. The Special Rapporteur continued to receive alarming reports regarding the situation of human rights defenders during the period under review. The authorities have persisted in their denial of registration for renowned human rights organizations, such as Viasna.

65. The Special Rapporteur refers to his report submitted to the General Assembly in 2014 (A/69/307), in which he made an in-depth analysis of the situation of human rights defenders and made several recommendations on ensuring an enabling environment for activists to operate. He notes, however, that the restrictions have remained in place, as has the practice of constant harassment, making it virtually impossible for human rights defenders to work safely.

66. On 24 November 2015, during a peaceful protest in Minsk commemorating the referendum held in 1996 that increased the powers of the President and led to the introduction of the death penalty, two *Viasna* observers, Sergei Kaspiarovich and Natalia Satsunkevich, were charged with having organized the event, despite wearing observer badges with their own photos. They face a fine or detention.[12]

67. On 16 February 2016, the criminal case against former presidential candidate Ales Mikhalevich was extended again for another month. On 14 March, his case, originally opened after the events of 2010, was suspended, but may be re-opened at any time.

68. On 10 July 2015, human rights activist Mikhail Zhamchuzhny was sentenced to six years in a penal colony on the charges of intentional disclosure of information constituting an official secret, illegal acquisition (production) of means for secretly obtaining

[10] See Human Rights Watch, Human Rights Watch UPR Submission to UNHRC - Belarus, 17 September 2014.

[11] Viasna Human Rights Center, "Situation of Human Rights in Belarus in December 2014", 13 January 2015.

[12] Worldwide Movement for Human Rights, "Belarus, judicial harassment of Mr. Sergei Kaspiarovich and Ms. Natalia Satsunkevich", 3 December 2015.

information constituting an official secret, and bribery. Despite the fact that the trial was held behind closed doors, and therefore not transparent, the Special Rapporteur believes, on the basis of *bona fide* sources, that the case is political in nature.

69. The Special Rapporteur refers to the case of Leanid Sudalenka, a human rights activist whose regular harassment is emblematic of the handling of human rights defenders. In April, May and August 2015, police and border guards repeatedly subjected Mr. Sudalenka to searches in his apartment and at border crossings, seized his computer, and in at least one instance allegedly used violence against him. All allegations of dissemination of pornographic material, like all other charges against him, were eventually dropped. Mr. Sudalenka has also faced administrative charges laid by the tax authorities, although they were subsequently dismissed as immaterial.

70. The Special Rapporteur also refers to the situation of human rights activist Alena Tankachova, who was deported from Belarus in February 2015. Ms. Tankachova made a written request to the Department of the Interior of the city of Minsk that the period of the ban on her return to Belarus be reduced and that her name be removed from the list of persons banned from entering the country. The Department rejected her request.

71. Already in 2010, at its first universal periodic review, States had recommended that the authorities of Belarus guarantee that civic organizations, human rights defenders, political parties and unions were able to carry out their legitimate activities without fear of reprisal, restrictions, judicial harassment or intimidation, and ensure that violations against human rights defenders were effectively investigated in order to bring those liable to justice (A/HRC/15/16, paras. 98.30 – 98.35).

72. Five years later, the same recommendations were made again, namely, that the authorities ensure the safety of human rights defenders, and their human rights, particularly the freedom of expression, and conduct a prompt and transparent investigation in to reports of intimidation of and reprisals, threats and violence against human rights defenders (A/HRC/30/3, paras. 129.67 – 129.90).

73. The Committee against Torture had similarly concluded in 2012 that Belarus should take all steps necessary to ensure the protection of human rights defenders and journalists from intimidation or violence as a result of their activities and conduct a prompt, impartial and thorough investigation in to, and prosecution and punishment of such acts (see CAT/C/BLR/CO/4).

74. The Committee on the Elimination of Racial Discrimination had pointed out in 2013 that Belarus should ensure strict adherence to the principles and provisions of the International Convention on the Elimination of All Forms of Racial Discrimination in the interpretation and application of the Counteracting Extremism Act, and in its enforcement, so that it did not target or disadvantage human rights defenders promoting the elimination of racial discrimination (see CERD/C/BLR/CO/18-19, para. 10).

F. Civil society

75. The healthy development of civil society in Belarus has for decades been suppressed by restrictive regulations, which have hindered and even criminalized funding. Although the President signed, on 2 September 2015, a decree on foreign donations, which alleviated some procedures, all funding must still be registered with a department of the office of the President. Recourse to foreign funding without authorization still constitutes an administrative offence, and may become a criminal matter if repeated within the same year. Human rights activities are still excluded from the list of acceptable spending goals, making any such spending potentially criminal.

76. The presidential decree on funding thus maintains a situation already addressed during the first universal periodic review of Belarus, when States recommended that it strengthen cooperation between the Government and civil society organizations in promoting and protecting human rights (A/HRC/15/16, para. 97.40), and ensure that the authorities allow and facilitate the registration of non-governmental organizations and opposition parties (ibid., para. 98.30). In 2015, the Working Group on the Universal Periodic Review reported that no progress had been made with regard to those recommendations (A/HRC/30/3, para. 129.71 – 129.88).

77. The Committee on the Rights of the Child, in 2011, concluded that Belarus should review its laws, regulations and judicial and administrative practices to facilitate the registration and operation of non-governmental organizations and decriminalize membership in organizations that were unregistered (CRC/C/BLR/CO/3-4).

78. Similarly, the Committee on the Elimination of Racial Discrimination recommended in 2013 that the Government of Belarus should consult and expand its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination (CERD/C/BLR/CO/18-19, para. 21).

79. In 2014, the Special Rapporteur pointed out the need for the authorities of Belarus to remove all legal and practical obstacles to international cooperation of civil society striving to strengthen the enjoyment of the liberties provided for in international treaties and documents, including the obstacles that block, hinder, put conditions on and in particular that criminalize or financially penalize funding help from peer organizations abroad (A/HRC/26/44, para. 139 (o)), and cease the practice of giving preferential treatment to certain non-governmental organizations over others, and create a safe and enabling environment for civil society (A/69/307, para. 93 (l)).

F. Torture and other cruel, inhuman or degrading treatment or punishment

80. The Special Rapporteur notes that allegations of torture continued to be brought to his attention. As in past years, and despite the repeated recommendations by the United Nations human rights bodies, such allegations rarely lead to any criminal investigation against perpetrators. The authorities still do not allow access to the penitentiary system to independent investigators or monitors.

81. The Special Rapporteur was deeply disturbed by reports on 30 March 2016 on the death of Yahor Pratasenia, aged 20. In January 2016, Mr. Pratasenia had attempted to take his life in Zhodzina jail in protest against torture and abuse during interrogations and his detention. He had been arrested by the General Directorate for Drug Control and Human Trafficking in April 2015, and repeatedly subjected to physical abuse during his detention. On 28 December 2015, Mr. Pratasenia was sentenced to 14 years of imprisonment. The Special Rapporteur is concerned that no action was taken by the prison authorities to prevent the suicide attempts of the detainee.

82. The Special Rapporteur is concerned by reports about the regular use of violence by police officers against football fans. On 3 May 2015, police officers in Baranavichy allegedly severely beat football fans, 56 of whom were detained and taken to the police department. They were then forced to write statements that they had no claims against the police.

83. On 13 October 2015, blogger Viktar Nikitsenka was detained and severely beaten by security forces in Minsk for having taken a photograph with a homemade poster stating

"Lukashenka on trial". Despite the fact that medical experts found injuries on the victim's body, the authorities refuse to open a criminal case against the police officers.

84. Since their release, former political prisoners Yauhen Vaskovich, Ihar Alinevich, Yury Rubtsou and Mikalai Dziadok have spoken out about the conditions of detention and of the cruel and degrading treatment of prisoners.

85. In late December 2015, Pavel Rasliakou, a student, was beaten by investigators from the Department of the Interior of the Kastrychnitski district when questioned about a case of theft. The investigative committee refused to open a criminal case. The allegations of violence were corroborated by the conclusions reached in a medical examination.

86. On 25 January 2016, several activists disturbed a hearing of the "graffiti trial" (see para. 43 above). Pavel Siarhei and Maksim Shytsik were allegedly beaten by police officers. Pavel Dabravolski, a reporter, who was covering the trial for online media, was also detained and beaten. The court of the Frunzienski district sentenced the three men to fines on the basis of the testimony of the police officer, who, according to the persons convicted, had beaten them.

87. Already in 2010, at the first universal periodic review of Belarus, States had recommended that it introduce the definition of torture used in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into national legislation, respect the provisions of the International Covenant on Civil and Political Rights by introducing an absolute prohibition on torture, suspend all officers implicated in cases of torture and ensure full and impartial investigation, and bring perpetrators to justice, as demanded by article 4 of the Convention (A/HRC/15/16, paras. 97.15, 97.28 and 98-1998.21).

88. In 2015, the same recommendations were made at the second universal periodic review of Belarus (see A/HRC/30/3, paras. 127.51-52).

89. In 2012, the Committee against Torture, in its concluding observations, recommended that Belarus adopt a comprehensive set of modifications in its legislation and practices (see CAT/C/BLR/CO/4).

90. The Special Rapporteur has also recommended that Belarus ensure the absolute prohibition of torture and other ill-treatment in law and in practice, and take measures to bring conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners and other relevant international and national law standards (A/HRC/26/44, para. 139 (j)). No reforms or preparations in this regard were discernible in the period under review.

G. Arbitrary arrest and detention, and enforced disappearances

91. The regular application on a massive scale of short-term arbitrary detention has long sustained the atmosphere of fear deterring use of the right to civil freedoms. The Special Rapporteur is concerned that the Government has not addressed any of the recommendations made by human rights mechanisms regarding arbitrary detention, especially of journalists and human rights defenders, and the practice of preventive detention. Despite apparent instructions to law enforcement to address public utterances with a summons to court rather than with violent means, the Special Rapporteur continued to receive serious allegations of arrests without warrant, and detention for several hours on disputable charges of individuals who participated in public demonstrations and rallies. The Special Rapporteur is concerned by the allegations of fabricated convictions and impunity of police officers who conduct arbitrary arrests and detention.

92. The Special Rapporteur draws attention to the fact that no progress has been made in solving outstanding cases of the enforced disappearance of political opponents of the President. These cases, which although dating back to 1999 and 2000 (see A/HRC/29/43, para. 66) are still unsolved, concern the testified abduction of prominent Belarusian opposition politician Viktar Hanchar and his business associate Anatol Krasouski, of Yury Zakharanka, the former Minister of the Interior, and Dmitri Zavadski, a cameraman. The issue was raised again during the second universal periodic review of Belarus (A/HRC/30/3, para. 129.5) amidst serious concerns with regard to the accountability of former or current law enforcement members and on impunity that the police authorities seem to enjoy.

93. On 12 August 2015, police in Mikashevichy detained Leanid Dubanosau, who was gathering signatures for presidential contender Tatsiana Karatkevich, on the grounds that he was intoxicated. The activist was forced to undergo a medical examination, which showed that he was sober at the time.[13]

94. On 9 September 2015, police officers in Jelsk, Homiel region, detained Aliaksandr Rybachenka, an activist for the European Belarus opposition movement, for trying to photograph flyers calling for a boycott of the elections. The activist was held in the police station for several hours, and eventually released without charge.[14]

95. On 1 August 2015, police officers prevented the holding of a rock concert near Minsk, and detained young people, including girls, using force and non-lethal weapons.

96. On 6 November 2015, Tamara Siarhei, leader of the civil initiative "Against lawlessness in the courts and Prosecutor's offices", who attempted to deliver a petition to President Lukashenka, was detained at the central railway station in Minsk.[15]

97. Arbitrary arrest and detention have been the subject of many recommendations of various United Nations human rights mechanisms, for at least the past six years. For example, the Committee on the Rights of the Child concluded that the authorities of Belarus should investigate the complaints about arbitrary detention of women in the context of the Presidential elections on 19 December 2010 (CRC/C/BLR/CO/3-4). Similarly, at the first universal periodic review of Belarus, States called upon the Government of Belarus to investigate, identify and punish perpetrators of harassment, arbitrary detention and torture of government opponents (A/HRC/15/16, para. 98.23). During the second universal periodic review of the State, the Working Group addressed the issue of the arbitrary detention of journalists, and called upon the Government to abandon that practice (see A/HRC/30/3, para. 129). In 2014, the Special Rapporteur recommended that all detainees be informed promptly of the reason for their detention and any charges against them, and that regular access to a lawyer of their choice and to their families be granted (A/HRC/26/44, para. 139 (i)).

H. Death penalty

98. Belarus remains the only State in Europe to enforce the death penalty. The authorities do not release information on the number of executions, which reportedly are carried out by shooting. Prisoners and relatives are not informed when the execution is due, and the relatives receive no prior notification. The bodies are not returned to relatives, but

[13] Viasna Human Rights Center, "Collector of signatures for Tatsiana Karatkevich detained in Mikaševičy", 13 August 2015.

[14] Viasna, "European Belarus activist detained in Jelsk", 21 September 2015.

[15] Viasna, "Human Rights Situation in Belarus: November 2015", 2 December 2015.

buried in unmarked graves.[16] This practice is maintained despite the numerous recommendations made by United Nations bodies and peer procedures over many years.

99. Since the previous report of the Special Rapporteur to the Human Rights Council, three sentences to death penalty have been announced. On 20 November 2015, Ivan Kulesh was sentenced by the Hrodna regional court. The sentence was confirmed by the Supreme Court on 29 March 2016. On 5 January 2016, Henadz Yakavistki was sentenced by the Minsk regional court. On 16 February, Sergei Khmelevsky was sentenced by the Minsk regional court.

100. The Government has continued its policy of disregarding deliberations pending before the Human Rights Committee and proceeding with executions. On 6 November 2015, the Human Rights Committee concluded that the execution of Pavel Selyun on 17 April 2014, despite a request for interim measures of protection, was a violation of article 14 of the International Covenant on Civil and Political Rights owing to the use of torture, and article 6 of the Covenant owing to the denial of the person's right to life (CCPR/C/115/D/2289/2013, communication No. 2289/2013).

101. The recommendations made at the second universal periodic review on the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (A/HRC/30/3, paras. 130.1 to 130.9) did not enjoy the support of the Government of Belarus; the Special Rapporteur maintains serious doubts on the professed goodwill of the authorities to put an end to the practice described above. Furthermore, the parliamentary working group on the death penalty, the establishment of which in 2012 had been viewed as a positive development by the Special Rapporteur, has yet to issue any constructive conclusions.

102. The State has made no progress on recommendations it supported, such as on conducting public campaigns to explain arguments in favour of the abolition of the death penalty, with the aim of ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (A/HRC/30/3, para. 127.1), nor on examining recommendations with regard to the establishment of a moratorium on the death penalty (ibid., paras. 129.31 to 129.49).

103. In the highly centralized decision-making system of Belarus, the absence of any progress on the issue of death penalty, such as the commutation of the death sentence to a life sentence or the imposition of a practical moratorium on executions, can be explained as primarily a lack of political will of the authorities of Belarus.

I. Electoral system

104. The presidential election of 11 October 2015 was monitored by an election observation mission of the OCSE Office for Democratic Institutions and Human Rights, which issued its report on 28 January 2016.[17] In its report, the mission referred to a number of administrative improvements and certain goodwill gestures by the authorities to engage. It noted the absence of violence against opposition rallies that had marred the 2010 election, although it underlined the overall lack of progress, especially in the crucial domains of media rights, the verifiability of voter turnout, the transparency of vote counting and the inclusiveness of election committees.

[16] Civil Rights Defenders, "Human Rights in Belarus", 7 July 2015.

[17] OSCE, "Belarus, Presidential Elections", 28 January 2016 (see footnote 1).

105. The Parliament of Belarus has for two decades been the only legislative body in Europe without any members of an opposition, and has had no effective competence to actually legislate, given the power of the President to rule by decree.

106. In the light of the upcoming parliamentary elections in September 2016, the Special Rapporteur remains concerned about the Government's broad discretionary powers to deny registration of or to deregister political parties. The Belarusian authorities have not registered a single new political party since 2000, and political parties are repeatedly denied registration. For instance, on 14 August 2015, the Ministry of Justice refused to register the Belarusian Christian Democracy party for the fifth time. Consequently, on 14 September 2015, the leaders of the party filed a complaint with the Supreme Court against the refusal. In December, the party founders submitted an application for registration for the sixth time.

107. Registered oppositional political parties often face the rejection of their requests for public meetings. For instance, the Belarusian Party of the Left "Fair World" reported that that every one of its 65 applications for permission to hold meetings with voters had been rejected; the United Civil Party claimed that all eight of its requests had been rejected; and all 16 applications by members of the organizing committee of Belarusian Christian Democracy had been turned down. By contrast, parties and associations that support the incumbent parties were permitted to hold a large number of events.[18]

108. The Special Rapporteur notes the creation, on 12 February 2016, of an interdepartmental expert group on the recommendations made by the OCSE Office for Democratic Institutions and Human Rights on measures to improve the electoral process. He nonetheless regrets that the recommendations on amending the Electoral Code will be examined only after the parliamentary elections in September, and that civil society is not represented in the working group.

109. The Special Rapporteur points out that the six political prisoners (including some former presidential candidates) released (see para. 4 above) still have no civil rights, and therefore cannot stand for election.

110. In 2015, the Special Rapporteur presented his comprehensive assessment of the situation of elections-related human rights (see A/HRC/29/43). The recommendations were made in view of the presidential election of October 2015, and they remain valid for the parliamentary elections to be held in September 2016.

111. The most desirable reform steps would be to allow the free flow of political information and inclusive debates in the mass media; to repeal the law of 2013 criminalizing calls to boycott elections; to ensure the registration of parties and their participation in election committees; and to make turnout and vote results verifiable (see A/HRC/29/43 and A/70/313).

112. The Special Rapporteur stresses that lack of violence is only an initial precondition for the full respect of article 25 of the International Covenant on Civil and Political Rights. The forthcoming parliamentary elections in 2016 will be an opportunity for the authorities to show their commitment to reform by ensuring that free and fair parliamentary elections lead to the formation of a strong, pluralistic legislative body.

[18] Ibid.

J. Conditions of work

113. The Special Rapporteur, the International Labour Organization and several other bodies have criticized the fact that forced labour is still massively present in Belarus, the only country in Europe where State property accounts for between 70 and 80 per cent of the economy.

114. The Special Rapporteur deplores the approval, on 6 May 2015, of the presidential decree No. 3 on the prevention of social dependency, which creates the conditions for the expansion of the practice of forced labour in Belarus. It provides for the payment of fees by certain categories of unemployed citizens, including women raising children up to a certain age, persons with disabilities, senior citizens and students. It also grants the police the right to arrest persons "with obligations" (such as parents who have children under the custody of the Government) for even a single absence from work, and to send them to compulsory work.

115. The Special Rapporteur received reports of local authorities pressuring employees of local businesses and organizations to require participation in unpaid work, such as street cleaning. Some employees in the Kruhlaje district were allegedly required to donate their salaries earned on 27 October 2015 (on the "Day of Unpaid Labour in the Workplace") to a special account held by the local authorities.

116. The Special Rapporteur remains concerned about the discrimination in the workplace that members of unofficial trade unions and other activists face.

117. In September 2015, a union activist who went to work wearing a prisoner uniform in protest against labour conditions was fired.[19]

118. The management of a tractor factory in Babrujsk allegedly continue to dismiss activists of the Free Trade Union of Belarus. In August 2015, three members of the trade union were allegedly dismissed from the factory. They appealed to the chair of the regional executive committee, who did not take any action.[20]

119. At the second universal periodic review of Belarus, in 2015, the Working Group on the Universal Periodic Review raised the issues of working conditions and forced labour, and called upon Belarus to take measures to implement the recommendations made by the Committee on Economic, Social and Cultural Rights, including through the abolition of all types of forced labour, the elimination of fines for labour inactivity, and the abandonment of the widespread use of short-term working contracts as a means to deter workers from criticizing their conditions (A/HRC/30/3, paras. 127.86 and 129.96).

K. Discrimination

120. Although the Constitution of Belarus guarantees the general principles of equality and non-discrimination, no corresponding anti-discrimination legal framework is in place. Possible grounds for discrimination are listed only in the Labour Code, but the list is not exhaustive. Since there is no specific anti-discrimination law in Belarus, courts do not accept discrimination as a basis for lawsuits (A/HRC/29/43, para. 115). The general absence of freedom of association is also a cause of discrimination within society.

[19] Viasna, "Baranavičy: Opposition activist fired over wearing prison uniform at work", 27 September 2015.

[20] Viasna, "Another trade union activist loses job in Babrujsk", 16 September 2015.

121. The Special Rapporteur reiterates his recommendation, echoed in 2015 during the universal periodic review (A/HRC/30/3, paras. 129.24 – 129.28), that the authorities of Belarus enact, in order to address discrimination and the impunity thereof effectively, comprehensive anti-discrimination legislation prohibiting any kind of discrimination on the grounds of race, religion, sexual orientation and gender identity, language, political conviction or physical or mental disability, and at the same time establish mechanisms to ensure the constitutional principles of equality and non-discrimination and provide for remedies at law in cases of discrimination.

1. Gender

122. Although women are chosen to occupy various positions in the State apparatus, the Committee on the Elimination of Discrimination against Women, in 2011, in its concluding observations on Belarus, called upon the State to consider adopting a law on gender equality or comprehensive anti-discrimination legislation, including a clear definition of all forms of discrimination against women (CEDAW/C/BLR/CO/7, para. 12). Domestic violence, wage disparities and participation in political life and decision-making processes remain recurring challenges.

123. Belarus has not yet introduced legislation on domestic violence and marital rape.[21] The Government's efforts to combat gender-based violence have been mainly directed at preventing such crimes, not at protecting or assisting victims. Moreover, authorities have not tackled the root causes of violence, including alcoholism, social stigma and gender-based stereotypes.[22] The United Nations Population Fund has pledged to support the Government's efforts to develop and adopt a law on domestic violence.

124. Despite the provisions of article 14 of the Labour Code, which prohibits any discrimination in labour relations, gender inequality in the labour market is still an issue.[23] For instance, independent non-governmental women's organizations have reported that women are paid at least 25 per cent less than men.[24]

125. At its second universal periodic review, in 2015, States recommended that Belarus should continue implementation of its plan to combat discrimination against women and make further investment in the protection and promotion of women's rights to encourage their participation in decision-making processes (see A/HRC/30/3, para. 127).

2. Persons with disabilities

126. The Special Rapporteur commends the signing by Belarus of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto on 28 September 2015. Owing to the absence of a specific prohibition of discrimination against persons with physical, sensory, intellectual or mental disabilities, however, persons with disabilities continue to face physical and regulatory barriers, challenges to their access to work and education, and stereotyping (A/HRC/29/43, para. 120). The Special Rapporteur therefore recommends that the Government bring legislation and practice into conformity with the provisions of the Convention.

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[21] Civil Rights Defenders, "Human Rights in Belarus", 7 July 2015.

[22] United States Department of State, 2014 Country Reports on Human Rights Practices – Belarus, 25 June 2015 (available from www.refworld.org/docid/559bd58112.html).

[23] See ODB Brussels, "Global Call for Proposal 2015 under EIDHR Announced", 14 September 2015.

[24] United States Department of State, 2014 Country Reports – Belarus (see footnote 23 above).

3. LGBTI persons

127. Although same-sex relationships are no longer criminalized, current legislation does not offer protection to victims of discrimination on the grounds of sexual orientation, gender identity or gender expression.[25] Partly owing to the widespread homophobic rhetoric expressed even at the highest levels of the Government, discrimination against LGBTI persons, frequently manifested in the form of violence, remains a widespread phenomenon in Belarus. For example, on 25 May 2014, a young man, Mikhail Pishcheuski, was attacked while leaving a gay club in Minsk (A/HRC/29/43, para. 123). Mr. Pishcheuski died in hospital on 27 October 2015 from his injuries. Even though at his trial the murderer admitted that he had started harassing Mr. Pishcheuski because of his presumed homosexuality, the court decided that the crime had been motivated by "recklessness", showing that, in cases of crimes committed against homosexuals, hatred is not considered an aggravating factor. The perpetrator was sentenced to two years and eight months in prison, but was released only 11 months after sentencing.

128. In December 2014, the Government introduced a draft "anti-propaganda" law that would ban the dissemination of any information "discrediting the institution of the family" to children. The draft bill made no mention of any specific penal or criminal sanctions, but could be a further deterrent to open discussion of sexual orientation and gender identity.[26]

L. Cultural rights

129. The Special Rapporteur remains concerned about the limited use of the Belarusian language in education and cultural life (A/HRC/29/43, para. 126) and the systematic disregard of the principles of linguistic equality by the Government.

130. In August 2015, the Parliamentary Standing Committee on Education, Culture and Science considered the appeal made by the assembly of the Salihorsk branch of the Belarusian Language Society on the need to ensure equality of the Belarusian and the Russian languages in all spheres of life. The Committee denied that the current legislation limited the right of citizens to use either of the official languages.[27]

131. In 2013, the Committee on Economic, Social and Cultural Rights has already called upon the Government of Belarus to ensure that those wishing to study in Belarusian language classes, including at the level of higher education, are provided with such opportunities, and to promote the wider use of the Belarusian language in all areas of life, including cultural life (E/C.12/BLR/CO/4-6, para. 29).

V. Conclusions and recommendations

132. **In the light of the information made available relating tothe period under review, the Special Rapporteur finds that the systemic curtailment of human rights in Belarus has not changed.**

[25] Joint submission by GayBelarus and the Sexual Rights Initiative for the universal periodic review of Belarus, May 2015.

[26] See ILGA-Europe, Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe, 2015.

[27] Vtasna, "Parliament believes that language is settled perfectly by current legislation", 12 August 2015.

133. **No substantial changes in the repressive legal framework were discernible, despite repeated recommendations made by numerous United Nations human rights mechanisms on amending domestic laws to bring them into line with international human rights standards. The deeply entrenched limitations to the free enjoyment of all human rights continue to be inherent to the organization and functioning of the State.**

134. **Five years since its first review by the Working Group on the Universal Periodic Review, Belarus is still uncooperative with United Nations human rights mechanisms.**

135. **The Special Rapporteur is concerned that the perception that the situation of human rights in Belarus has improved, based on sporadic and marginal changes, conceals the lack of political will to engage in fundamental shifts, which are desperately needed. A few welcome concessions by the State, such as the release of political prisoners on the eve of the presidential election or the tendency to opt for fines rather than impose detention for people taking part in non-authorized rallies, allow nevertheless for the hope that the State will eventually commence to implement its long-pledged compliance with international human rights standards.**

136. **The Special Rapporteur encourages the authorities of Belarus to take advantage of the forthcoming parliamentary elections to strengthen, even if gradually, the national human rights protection system. The long list of recommendations made by international and regional human rights mechanisms offers a toolbox for the authorities.**

137. **The current level of scrutiny by the United Nations of compliance by Belarus with its human rights obligations must therefore be maintained, especially in view of the forthcoming parliamentary elections.**

138. **The Special Rapporteur reiterates his readiness to cooperate with the Government of Belarus. The recommendations that he made in his previous reports remain valid.**

139. **In addition, the Special Rapporteur recommends that the Government of Belarus:**

(a) **Reinstate the civil and political rights of all political prisoners that have been released;**

(b) **Repeal article 193-1 of the Criminal Code curtailing the freedoms of peaceful assembly and of association;**

(c) **Transform the permission-based registration system into a notification-based one so that the freedoms of assembly, association and expression, and many other human rights, cease to depend on politicized, selective and arbitrary government decisions;**

(d) **Register the civil society organizations and political parties that have been denied official recognition;**

(e) **Introduce a moratorium on executions leading to the total abolition of the death penalty;**

(f) **Implement all recommendations made by human rights mechanisms by means of a national human rights plan of action, designed in partnership with international, regional and domestic partners, including civil society;**

(g) **Establish an independent body responsible for the appointment, promotion, suspension and removal of judges and prosecutors, in accordance with the Basic Principles on the Independence of the Judiciary;**

(h) **Ensure the protection of all human rights defenders and activists from abuses by the State or law enforcement officials, and address impunity in cases of human rights violations by the latter;**

(i) **Implement the recommendations made by the OSCE election observation mission in its reports on the parliamentary elections of 2012 and the presidential election of 2015;**

(j) **Draft an anti-discrimination law encompassing all grounds of discrimination.**

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Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Note by the Secretariat

In the present report, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance addresses developments that he has identified with regard to the continuing human rights and democratic challenges posed by extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements. He also reflects on the issue that he has reported on for in previous reports. The Special Rapporteur remains deeply concerned by the problem of extremist movements and continued expressions of glorification of Nazism by some groups.

The Special Rapporteur notes that there have been no major developments since the presentation of his previous relevant reports to the General Assembly and to the Human Rights Council, and that past recommendations made on the issue are still applicable.

The Special Rapporteur summarizes the general trends identified to date with regard to the human rights and democratic challenges that extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements, continue to pose. He concludes the report by reiterating his conclusions and recommendations made in previous reports.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to General Assembly resolution 70/139, in which the Assembly requested the Special Rapporteur to prepare, for submission to, inter alia, the Council at its thirty-second session, a report on the implementation of that resolution on combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance, based on the views of Governments and non-governmental organizations.

2. Also in resolution 70/139, the General Assembly recalled the request of the Commission on Human Rights, in its resolution 2005/5, that the Special Rapporteur continue to reflect on that issue, make relevant recommendations in his future reports, and seek and take into account in that regard the views of Governments and non-governmental organizations.

3. In the present report, the Special Rapporteur addresses development that he has identified with regard to the continuing human rights and democratic challenges posed by extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements. He also reflects on the issue that he has reported on in previous reports. The Special Rapporteur remains deeply concerned by the problem of extremist movements and continued expressions of glorification of Nazism by some groups.

4. The Special Rapporteur notes that there have been no major developments since the presentation of his previous relevant reports on the issue to the General Assembly (A/69/334 and A/70/321) and to the Human Rights Council (A/HRC/23/24, A/HRC/26/50 and A/HRC/29/47), and that past recommendations made on the issue are still applicable.

II. Information received relating to the existence of extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements

5. The Special Rapporteur remains deeply concerned at the continuing spread of violent incidents incited by nationalism, racism, xenophobia and related intolerance worldwide, and continues to express concern at the glorification of the Nazi movement in specific areas. He notes with concern recurring practices that fuel contemporary forms of racism and pose a challenge to the protection and consolidation of democracy and human rights, and the protection of vulnerable groups of individuals against racist and xenophobic crimes.

6. During the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa, in 2001, and in the Durban Declaration and Programme of Action subsequently adopted, States recognized that political manifestos and organizations based on racism, xenophobia or doctrines of racial superiority and related discrimination were irreconcilable with the principles of democracy and good governance.

7. As noted in his previous thematic reports to the Human Rights Council (A/HRC/23/24, A/HRC/26/50 and A/HRC/29/47), the Special Rapporteur has continued to receive information that extremist political parties, movements and groups have continued to gain influence in several countries and regions. In Europe in particular, there has been a trend of a number of local and regional parliamentary seats won by representatives of extremist political parties. The Special Rapporteur is concerned that, in some States, some mainstream political parties continue to form coalitions with extremist political parties; for this reason, he emphasizes the need for all democratic political parties to base their programmes and activities on respect for human rights and freedoms, and to condemn political messages that have the objective of fuelling racist, xenophobic, discriminatory or intolerant ideas.

8. The stigmatization and targeting of vulnerable groups, such as migrants and refugees, continues. The Special Rapporteur is concerned at the increasing tendency of political leaders to blame certain groups for high unemployment rates, cuts in social benefits and increasing poverty. Individuals of the Muslim and Jewish faiths, persons of African descent and individuals from the Roma communities continue to be singled out, stigmatized and subjected to violence, which can take the form of arson attacks on houses and the vandalizing of school property or places of worship. The Special Rapporteur also received information on threats against Muslim women wearing headscarves and physical attacks on imams at mosques. As stated in his previous reports, political leaders should take all the measures necessary to address social and economic issues in an appropriate manner, especially during periods of economic recession, to condemn strongly expressions of racism, xenophobia and related intolerance, and not to use extremist rhetoric, a practice particularly observed during electoral campaigns with a view to winning elections (see A/HRC/26/50 and A/HRC/29/47).

9. The Special Rapporteur also notes acts that, following a similar pattern, glorify Nazism, such as the painting of swastikas on monuments dedicated to victims of the Holocaust or in Jewish schools, and the desecration of Jewish cemeteries. He reiterates his condemnation of attempts by extreme right-wing groups to deny the Holocaust and to falsify history. Such revisionism contributes to the rehabilitation and dissemination of Nazism and other extreme ideologies, and creates fertile ground for nationalist and neo-Nazi demonstrations. The Special Rapporteur recalls the importance of criminalizing the approval, denial or belittlement of the Holocaust in national law, especially considering that such denial could promote racist rhetoric and, as such, constitutes hate speech under article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination.

10. As mentioned in previous thematic reports of the Special Rapporteur, racist and intolerant hate speech in political discourse has also escalated in the media, on the Internet, namely on social networks, in particular against migrants in general, including refugees and asylum seekers, in addition to individuals from the Muslim and Jewish faiths and Roma communities (see A/HRC/26/50 and A/HRC/29/47). The Special Rapporteur is also concerned that extremist movements and groups are actively present on the Internet and social media networks and publish material on their websites, or on those of sympathetic organizations, which promote and incite racial discrimination and violence and are a means of expanding their network of supporters worldwide. The Special Rapporteur also notes that, in many States, systems in place for sanctioning violations of relevant legislation relating to social media are ineffective. He notes with regret that very few cases of hate speech have been sanctioned by justice systems, and also that the conviction rate remains very low.

11. The Special Rapporteur received information regarding cases of extremism in police forces. It was reported that, in some States, members of the police force openly propagate

far-right, nationalistic and xenophobic ideas and discourse in their official capacity as guardians of public order and civil servants of the State (see also A/HRC/23/24 and A/HRC/29/47). He is particularly concerned at reports indicating that, in some Eastern European States police officers are sometimes reluctant to intervene to stop harassment, verbal abuse or violent attacks and/or to receive complaints from victims of racist and xenophobic crimes, particularly migrants and those from minority groups, and to investigate those incidents. The Special Rapporteur is also concerned at allegations of increasing police involvement in crimes of sexual and gender-based violence against women of African descent and women from ethnic minorities, which often go unreported or are not thoroughly investigated.

12. The Special Rapporteur takes this opportunity to reiterate his concerns that many racist crimes go unreported owing to the reluctance of victims to come forward and report incidents to the appropriate authorities for fear of reprisal or prosecution (especially if their residence status is precarious or irregular), a belief that police will not investigate, or a lack of trust in the criminal justice system, in addition to language barriers and ignorance of their rights (see also A/HRC/23/24 and A/HRC/29/47). Furthermore, the lack of accurate and current ethnically disaggregated data, including sex-disaggregated data, particularly regarding irregular migrants and asylum seekers, may give the impression that racist crimes by extremist political parties, movements and groups do not exist or are less prevalent than they actually are. The Special Rapporteur urges States to take further measures to better engage with victims in order to mitigate their fears, and to create a sense of trust between victims, police and prosecution. States and civil society entities should also establish detailed systems for recording, reporting and monitoring such incidents and for encouraging victims to report them.

13. The Special Rapporteur also received reports of attacks by individuals and groups linked to far-right and neo-Nazi groups on homosexual, bisexual, lesbian and transgender individuals. The same groups that attack, discriminate and promote discrimination against racial minorities are also involved in attacks against individuals on the basis of their sexual identity. The Special Rapporteur is of the opinion that the identity of an individual is made up of multiple components, including gender, age, nationality, profession, sexual orientation, political opinion, religious affiliation and social origin; tolerance, mutual understanding and respect for all, without prejudice, stereotyping or discrimination, should therefore be the basis of human relations of any kind. He also notes the multiple and often interlinked forms of discrimination that individuals face on the basis of their race, colour, descent, national or ethnic origin or sexual orientation, and in this regard draws attention to the underreporting of racial violence directed at homosexual, bisexual, lesbian and transgender persons. He therefore urges States to take the measures necessary to address the intersectional nature of different forms of discrimination.

14. With reference to his previous reports (see A/HRC/26/50 and A/HRC/29/47), the Special Rapporteur expresses his concern at the increase in reported cases of racist symbols and banners displayed during football matches, and the racist slogans and gestures used on those occasions. Given the important role that professional athletes play in inspiring young people, those incidents are of particular concern. Once again, the Special Rapporteur reiterates his view that there is no place for racism and intolerance in sport. He recalls the requirements set out in Human Rights Council resolution 13/27, in which the Council urged States and relevant international and regional organizations to intensify the fight against racism in sport, including by developing and implementing codes of conduct that address the issue of extremist ideologies and intolerance among supporters.

III. Conclusions and recommendations

15. Given that the situation has not changed in the period that the Special Rapporteur has reported on the issue, he reiterates the recommendations made in his previous reports submitted to the Human Rights Council (A/HRC/23/24, A/HRC/26/50 and A/HRC/29/47) and the General Assembly (A/69/334 and A/70/321), as they remain valid and relevant. They are summarized below, clustered by thematic area.

16. The Special Rapporteur requests all States to submit information regarding measures taken within their respective territories in relation to the provisions set out in General Assembly resolution 70/139 on combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

A. Political measures

17. The Special Rapporteur appreciates the efforts made by States to counter extremist political parties, movements and groups, including neo-Nazis, skinhead groups and similar extremist ideological movements. While good practices have been identified, important challenges remain. The Special Rapporteur is of the view that a comprehensive approach based on a solid legal framework, complemented by other measures, including key policy measures such as education and awareness-raising programmes, and a victim-centred approach should be developed further and implemented.

18. States should always bear in mind that preserving and consolidating the values of democracy are essential to preventing and combating racism, racial discrimination, xenophobia and related intolerance effectively. Political leaders and parties must therefore unequivocally condemn all messages disseminating ideas based on racial superiority or hatred, incitement to racial discrimination or xenophobia. They should be aware of the moral authority they bear, promote tolerance and respect, and refrain from forming coalitions with extremist parties of a racist or xenophobic character.

B. Legislative measures

19. As stated in the outcome document of the Durban Declaration and Programme of Action, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law, as should be the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and all acts of violence or incitement to such acts. In that regard, the Special Rapporteur calls upon all States to respect the commitments made in the Durban Declaration and Programme of Action, which is a comprehensive framework for action against racism, racial discrimination and xenophobia. He also recommends that States adopt legislation that conforms to international human rights standards, including the International Convention on the Elimination of All Forms of Racial Discrimination, paying particular attention to their obligations under article 4 of the Convention. In that connection, States should introduce into domestic criminal law a provision to the effect that the commission of any offence with racist, xenophobic, anti-Semitic or homophobic motivations or aims constitutes an aggravating circumstance attracting heavier sanctions.

20. The Special Rapporteur reiterates that States have an obligation to prosecute the perpetrators of crimes with racist, xenophobic or anti-Semitic motivations and to

fight against impunity. States should ensure prompt, thorough and impartial investigation into such crimes, and that those responsible are adequately sanctioned.

21. The Special Rapporteur urges States to ensure that victims of crimes motivated by racism or xenophobia have full access to effective legal remedies, including the right to seek reparation for damages suffered as a result of such crimes. He also recommends that States ensure that victims of racist or xenophobic crimes are provided with the necessary legal, medical and psychological assistance and are made aware of their rights and of existing judicial and non-judicial remedies. States should further engage with vulnerable groups or minorities who are at particular risk of racist or xenophobic crimes, with the aim of restoring confidence in law enforcement officials and the criminal justice system, and facilitate better reporting of such crimes.

C. Disaggregated data

22. The Special Rapporteur reiterates the recommendations made in previous reports, in particular those made in his most recent report submitted to the General Assembly (A/70/335), that States should collect disaggregated data and statistics on racist, xenophobic and anti-Semitic crimes in order to identify the types of offences committed, the characteristics of the victims and of the perpetrators and whether they are affiliated with an extremist political party, movement or group. States should provide adequate financial, human and technical resources to improve the quality of data collection systems where those already exist, while ensuring that civil society is involved in the process, which is to be undertaken in such a way as to guarantee the protection of privacy.

D. Education

23. The Special Rapporteur recalls that education remains the most effective means of countering the negative influence that extremist political parties, movements and groups may have on young people. Recalling paragraph 136 of the Durban Programme of Action, and his relevant thematic report submitted to the Human Rights Council at its twenty-third session (A/HRC/23/56), he recommends that States recognize the important role of education in combating racism, racial discrimination, xenophobia and related intolerance, especially in promoting the principles of tolerance of and respect for ethnic, religious and cultural diversity and preventing the proliferation of extremist racist and xenophobic movements and propaganda, in particular among young people. He also reiterates his recommendation made in the said report that States should recognize the important role of formal and non-formal education in the deconstruction of prejudices, the positive change of negative perceptions, greater understanding and stronger social cohesion.

24. The Special Rapporteur condemns any denial or attempt to deny the Holocaust and all manifestations of religious intolerance, incitement, harassment or violence against persons or communities based on ethnic origin or religious belief. He encourages States to take concrete measures, including legislative and educational ones, such as inclusion of education about the Holocaust in school curricula, so as to prevent revisionism of the Second World War, the denial of the Holocaust and the Nazi genocide. He also encourages the active preservation of the sites that served as Nazi death camps, concentration and forced labour camps and prisons.

E. Capacity-building

25. The Special Rapporteur recommends that the capacity of law enforcement officials and members of the judiciary be strengthened further to address crimes

motivated by racist, xenophobic, anti-Semitic or homophobic biases. Comprehensive and mandatory human rights training, including training with a specific focus on racist and xenophobic crimes perpetrated by individuals linked to extremist political parties, groups and movements, should be provided to public officials, including law enforcement agents, who should also be provided with the necessary guidelines and procedures to be able to identify, investigate and register such crimes. He emphasizes that States should also ensure that law enforcement agents engage with vulnerable groups particularly at risk of racist, xenophobic or anti-Semitic crimes, in order to mitigate their legitimate fears and concerns, restore confidence in the application of the rule of law, and encourage them to report such crimes adequately.

F. Racist or xenophobic discourse online

26. The Special Rapporteur notes with concern the increased use of the Internet and social media to promote and disseminate racist content. States should take all opportunities to counter the dissemination of ideas based on racial superiority or hatred, and to promote the values of equality, non-discrimination, diversity and democracy, while respecting their obligations under articles 19 and 20 of the International Covenant on Civil and Political Rights. While taking measures to counter extremist ideas and biases, States should endeavour to strengthen freedom of expression, which plays a crucial role in promoting democracy and combating racist and xenophobic ideologies.

G. Sport

27. The Special Rapporteur recalls his recommendations on strengthening measures to prevent racist and xenophobic incidents at sporting events, noting the key role of sport in promoting cultural diversity, tolerance and harmony. He also recalls paragraph 218 of the Durban Programme of Action, which urges States, in cooperation with intergovernmental organizations, the International Olympic Committee and international and regional sports federations, to intensify the fight against racism in sport by educating the youth of the world through sport practiced without discrimination of any kind.

H. Civil society

28. The Special Rapporteur recalls the importance of cooperating closely with civil society and international and regional human rights mechanisms. In particular, the role played by civil society in collecting information, working closely with victims and promoting democratic principles and human rights should be emphasized. He calls upon national human rights institutions to develop appropriate programmes to promote tolerance of and respect for all, and to collect relevant information thereon.

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Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Corrigendum

The title of document A/HRC/32/49 and the heading on page 2 should read as above.

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Human Rights Council
Thirty-second session
Agenda item 3
Racism, racial discrimination, xenophobia and related forms of intolerance

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to Greece: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Greece.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to Greece: comments by the State*

1. The birth registration of Roma children regardless of their nationality, takes place in accordance with provisions of Law 344/1976 "documents indicating civil status". In the Civil Registration Offices within the Municipalities of the country, civil status documents are drawn up by the Registrars, certifying vital events, such as births, deaths, marriages etc of the Greek citizens and foreign nationals. There are not any restrictions which apply on civil status documents issued by the competent authorities to the foreigners residing in Greece.

2. Furthermore, specific laws regulate the acquisition of the Greek citizenship or the legal residence status of foreign nationals in Greece thus providing this category of people with legal rights which derive from the above status.

3. Roma who are Greek nationals form an integral part of the Greek population, they are subject to the Constitution and the national laws and enjoy all civil and political rights guaranteed to Greek citizens, provided they fulfill the necessary institutional requirements. In this respect, a prerequisite is their registration in the civil registers — so that the Greek citizenship can be proved-in accordance with article 6 of the PD 497/1991 as well as article 1 of the Ministerial Decision 22026/4813/10.3.1992 issued by delegation of the above law, which lays down that the birth-related civil status document is the necessary documentation for the registration in the Civil Registration Offices of the country. However, we would like to note that, because many people among the Roma population usually fail to register the birth of a child, the registration in the Civil Registration Offices becomes difficult, if not impossible.

4. The Directorate of Civil and Municipal Status thinks that the registration of the Roma population in the Civil Registration Offices should require not only the birth-related civil status document but also a Decision issued by the Secretary General of the Decentralized Administration Authority determining their Greek citizenship.

5. Furthermore, according to the Directorate of Civil and Municipal Status its units may contribute to the elaboration of an action plan concerning the Roma population census, mainly for those cases of the population groups that are proved to be in need of registration.

6. Concerning the political Party Golden Dawn and its actions, Greek parliament lifted the immunity of six leading members of this party in October 2013, in order to enable deeper investigation into their alleged involvement in serious criminal offences.

7. Furthermore, Law 4203/2013 introduced new provisions concerning the conditions for the distribution of public funding of political parties. Following this law a Joint Ministerial Decision which predicted suspension of any kind of State funding for Golden Dawn has been issued. According to this Decision no payment for this party has been effectuated since that time.

8. «In September 2014 Parliament adopted **Law 4285/2014, amending Law 927/1979**, with the aim to strengthen the country's criminal anti-racism legislation and adjusting the relevant legislative framework with EU Council Framework Decision 2008/913/JHA.

9. Law 4285/2014 punishes, inter alia, public incitement to acts or activities which may result to discrimination, hatred or violence against individuals or groups of individuals defined by reference to race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, or disability, in a manner which endangers public order or threatens life, liberty or physical integrity of the abovementioned persons, the establishment of or participation in an organization or union of persons of any kind systematically

* Reproduced as received.

pursuing the commission of the abovementioned acts, under the circumstances prescribed by the law, the act of publicly condoning, trivializing or maliciously denying the commission or seriousness of crimes of genocide, war crimes, crimes against humanity, the Holocaust and Nazi crimes, recognized by decisions of international courts or the Hellenic Parliament. In addition, the law introduces the liability of legal persons.

10. In particular, art. 2 of the abovementioned "anti-racist" law provides that "Whoever intentionally publicly, orally or through the press, the internet or any other means or manner, condones, trivializes or denies the existence or seriousness or crimes of genocide, war crimes, crimes against humanity, the Holocaust and crimes committed by Nazis, recognized by judgments of international courts of law or the Hellenic Parliament, and such conduct is directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity or disability, when such conduct is carried out in a manner likely to incite violence or hatred or which is threatening or abusive against a group or member of such a group, it shall be punished by the sentences referred to in paragraph 1 of the preceding article (art. 1)"

11. According to article 81A, inserted in the Criminal Code by the above - mentioned law 4285/2014, the commission of any offence on racist grounds (race, colour, religion, descent, national or ethnic origin, sexual orientation, disability, gender identity and, recently added, gender characteristics) constitutes an aggravating circumstance leading to penalty enhancement. A **recent legislative amendment by Law 4356/2015, which eliminated the notion of "hatred" from the elements of the crime facilitates even more the applicability of art. 81A.**

12. The punishable acts under law 927/1979, as well as any crime committed as a result thereof, are prosecuted *ex officio*. Victims of such offences are exempted from the obligation to pay a fee when submitting a criminal complaint or participating as a civil party in a criminal procedure; non-EU nationals who are victims or material witnesses of racist acts may be granted a residence permit on humanitarian grounds.

13. Moreover, Law **4356/2015 establishes a new criminal offence** (art. 361B of the Criminal Code) punishing the provision of goods and services with the contemptuous exclusion of a person on racist grounds.

14. Furthermore, in accordance with Article 2 of Law 4203/2013, **state financing of political parties whose leaders or a number of their elected officials are charged with the crime, in particular, of membership of a "criminal organization"** and put on pre-trial detention, is suspended by decision taken by the Parliament.

15. Along with the strengthening of the legislative framework, a number of **operational measures** have been taken. **Data collection** with regard to racist crimes has significantly improved and is expected to further improve following the operation of the new computerization system of the courts. A unified mechanism and database for registering alleged incidents of racist and xenophobic violence (including allegations against police personnel) has been created. Further improvements to the data collection system will be considered by the recently established National Council against Racism and Intolerance in cooperation with international organizations such as OSCE/ODIHR.

16. With respect to the "Golden Dawn Trial", the leader and members (including Members of Parliament) of the political party "Golden Dawn" were placed in September 2013 under judicial investigation for membership of a "criminal organization". Almost 70 individuals have been indicted. The trial opened on 20 April 2015 and is closely followed by civil society organizations, with full respect for the right to a fair trial, in particular through the "Golden Dawn Watch".

17. Following ECRI's recommendation, Law 4356/2015 provides for the establishment of the **"National Council against Racism and Intolerance"** with the participation, inter alia, of the National Commission of Human Rights, the Racist Violence Recording Network (where 36 NGOs participate), the UNHCR and the Greek Ombudsman. The purpose of this Council is the development of a comprehensive anti-racist strategy, the

coordination of all relevant stakeholders and the monitoring of the application of international, European and national legislation. A **National Action Plan against Racism** and Intolerance is also among the tasks of the Council. The Council met for the first time on 20 April.

18. Furthermore, **five special prosecutors** have been appointed in Athens, Piraeus, Thessaloniki, Patras and Heraklion for the investigation of racist crimes.

19. With regard to the **protection of victims of hate crimes** a number of measures have been adopted in the last few years.

20. First of all, victims of serious hate crimes with a low income are provided with free legal aid. In particular, they have the right to a counsel appointed by the state for filing a criminal complaint and participating in the criminal proceedings against the perpetrators.

21. Victims of hate crimes prosecuted ex officio (serious crimes), victims of hate speech and all beneficiaries of free legal aid are exempted from the obligation to pay a fee when submitting a criminal complaint.

22. Moreover, non-EU nationals who are victims or material witnesses of racist acts may be granted a residence permit on humanitarian grounds (art. 19 A, law 4251/2014 as amended by law 4332/2015).

23. Furthermore, many initiatives have been undertaken to address underreporting. Civil society organizations, such as NGOs and the Racist Violence Recording Network created by UNHCR and the National Commission for Human Rights with the participation of 38 NGOs, have greatly contributed in improving reporting of such crimes. In the same vein, the above mentioned National Council against Racism and Intolerance which was recently established, with a very broad and inclusive composition, is expected to contribute even further to the adoption of measures for the protection and empowerment of hate crime victims.

24. Last but not least, the forthcoming transposition of Directive 2012/29/EU on the rights, support and protection of victims of crime is going to improve even further **protection of victims of such crimes.**

25. In reference of the legislative initiative on the ratification of the Council of Europe's **Cybercrime** Convention and the Additional Protocol thereto concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems and the transposition of the Directive 2013/40/EU on attacks against information systems, the adoption of the bill by the Hellenic Parliament is pending after the recent completion of the public consultation process.

26. Finally, concerning **activity at EU level,** the Ministry of Justice, Transparency and Human Rights was an active member of the European Commission Expert Group on the Implementation of CFD 2008/913/JHA and is also represented at the FRA Working Group on Improving Reporting and Recording of Hate Crimes.

27. In addition, the Ministry has a very constructive **cooperation with the Council of Europe and OSCE** as regards training of police officers, judges and public prosecutors on racist violence issues.

28. With regard to the **fight against racism and discrimination based on sexual orientation or gender Identity** in particular, apart from the inclusion of such grounds in the anti-racism legislation and soon in Law 3304/2005 on equal treatment (as regards gender identity and gender characteristics), which is currently being amended, the law on the **civil partnership** pact was recently extended by the above-mentioned Law 4356/2015 to same-sex couples, recognizing family ties between the parties and conferring rights similar, in many fields, to those deriving from marriage. It is considered that the recognition of same-sex partnerships will contribute to the elimination of social prejudices and stereotypes against LGBTQI persons. Furthermore, **art. 347 of the Criminal Code** providing for a higher age of consent for male homosexual acts **was abolished** by the same law, effectively resulting to equalization of the age of consent.

29. In the same vein, new draft bills **on the review of family law and legal gender recognition** are being elaborated by the competent law-making committee. These legislative initiatives shall be noted as further steps to the enhancement and deepening of the protection of rights, specifically as regards equality, non-discrimination and respect of human dignity.

30. Concerning **equality and non-discrimination**, the respective principles are established by the Greek Constitution and they are specified in the respective legal framework consisting of a several laws. For instance, Law 3304/2005 which transposed the Racial Equality Directive (2000/43) and the Framework Directive on Equal Treatment (2000/78/EC) guarantees equal treatment in employment and occupation, social protection and social advantages, education and access to goods and services which are available to the public. Moreover, criminal sanctions are imposed in **case** of denial of access to and supply of goods or services based on grounds of racial or ethnic origin, religious or other belief, disability, age or sexual orientation. As already mentioned, a new criminal offence has been recently established (art. 361B of the Criminal Code) punishing the provision of goods and services with the contemptuous exclusion of a person on racist or discriminatory grounds.

31. L. 3304/2005 is currently under review with the intention to increase its effectiveness. The amendments include, inter alia, the reinforcement of the Greek Ombudsman competences as Equality Body and the explicit inclusion of 'gender identity' and 'gender characteristics' as grounds of non-discrimination.

32. The above mentioned policies and actions in connection with the multi-thematic cooperation and contribution of civil society, which is strongly pursued, are expected to lead to more openness, inclusiveness and profound respect of human rights, minimizing, thus, racist violence and hate speech.